

Persons with Disabilities

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During the second Universal Periodic Review in May 2012 at the UN Human Rights Council, India received two recommendations on the rights of persons with disabilities. India accepted the recommendation by Mexico to ensure better protection for persons with disabilities. Senegal recommended that the state 'ensure (s) universal, compulsory and free education aimed at eradicating discrimination that affects girls, marginal groups and persons with disabilities'. India did not accept this recommendation.

India ratified the UNCRPD in 2007. The convention mandates the signatory governments to harmonise all its relevant domestic laws and policies to eliminate barriers and to comply with the terms of the UNCRPD in order to protect the rights of the person with disabilities. India is bound to modify the four disability-specific domestic legislations i.e. The Mental Health Act 1987, Rehabilitation Council of India Act 1992, Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 and the National Trust Act 1999.

Article 35 of the UNCRPD mandates nations to submit country reports on its effective implementation. It took India 8 years to submit its first country report on UNCRPD implementation.

NATIONAL LEGAL FRAMEWORK

The Constitution of India ensures for all its citizens equality before the law, non-discrimination, fundamental freedoms and the right to life and liberty (Article 14, 15, 16, 19 and 21 of the Constitution). These Articles do not specifically refer to persons with disabilities but are general in nature. Many Indian laws, mostly stuck in colonial times, discriminate against people with disabilities. There are nearly 2,000 laws which discriminate against disabled persons. As such, these laws reflect outdated notions that persons with disabilities should only be the recipients of services rather than holders of rights.

Rights of Persons with Disabilities Act 2016

The Rights of Persons with Disabilities Act (RPWD) 2016 was passed in December 2016 by the Indian Parliament. This Act replaces the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act of 1995. The RPWD Act recognises 21 disabilities as against the 7 recognised by the 1995 Act. Using the UNCRPD definition, the Act defines persons with disabilities as *those with long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others*. The 1995 Act just listed out seven conditions viz. (i) Blindness; (ii) Low vision; (iii) Leprosy-cured; (iv) Hearing impairment; (v) Loco motor disability; (vi) Mental retardation; and (vii) Mental illness, to define disability. Conditions like deaf blindness, autism, thalassemia, sickle cell disease, dwarfism, muscular dystrophy, speech and language disability, specific learning disabilities (like dyslexia, dysgraphia etc), multiple disabilities and acid

attack victims are the other conditions that are now recognised.

This Act provides for social security for persons with disability. It lays down that "appropriate Governments shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities". It also makes provisions for support for women with disabilities for livelihood and for upbringing of their children, free health care especially in rural areas, provision of aids and appliances, unemployment allowance, care-giver allowance, insurance scheme, free health care etc. For persons with benchmark disabilities (those with 40 per cent and above) it provides for free education between the ages of six and eighteen years; five per cent reservation in all government institutions of higher education; reservation of 4 per cent in employment in government establishments etc.

However, there are several concerns about the Act, with some disability groups and activists claiming that the Act is not fully UNCRPD compliant, especially with regard to legal capacity.

The Mental Health Care Bill 2013

The Mental Health Care Bill 2013, which provides for protection and promotion of rights of persons with mental illness during the delivery of health care in institutions and in the community, was passed unanimously by Upper House (Rajya Sabha) in August 2016. It is yet to be passed by the lower house of Parliament. The Bill seeks to replace the Mental Health Act, 1987.

CHALLENGES

Population figures of the disabled Persons are highly underestimated

Discrimination and human rights abuses faced by the Women with Disabilities

ISSUES AND IMPACTS

The last Indian census in 2011 reported that just 2.21 percent of the population has some form of disability. On the other hand conservative estimates of the World Bank and World Health Organization suggest that there are about 70-100 million individuals with a disability in India. Disability activists say this count underestimates the actual number. In India, the disability sector in general estimates that 4-5% of the population is disabled. . In India, only 2% of disabled people are self-dependent whereas in China, 80% of disabled people can function independently.

Study conducted by Disability Rights Promotion International (D.R.P.I.) states that women with disabilities in India face triple discrimination of being female, being disabled and being poor. According to a report submitted by Disabled People's International (India) and its partners to CEDAW in September 2013, "Almost 80% of women with disabilities are victims of violence and they are four times more likely than other women to suffer sexual violence." Criminal Law Amendment Act of 2013 has tried to address concerns of sexual violence on women with disabilities. Rights to Persons with Disabilities Act of 2016 also has specific clauses on women with disabilities.

CHALLENGES

ISSUES AND IMPACTS

Mobility and Accessibility pose huge challenges

The Government launched the “Accessible India Campaign” (Sugamya Bharat Abhiyan), in December 2015 with the objective of targets creation of Physical & Virtual (IT) infrastructure truly accessible and inclusive for the persons with disabilities. This campaign had set an ambitious target of conducting accessibility audit in 26 big cities of at least 50 most important government buildings and in another 22 small cities of at least 25 most important government buildings and converting them into fully accessible buildings by July 2016. No tangible progress is visible months after the deadline expired. Despite the 1995 Act mandating public institutions to have ramps, lifts and facilities to enable free mobility, disabled students still drop out of schools and colleges or are dependent on others for access to classrooms.

Limited Opportunities for Availing Education Facilities

According to a UNESCO and UNICEF report despite India having a right to education law, out of 2.9 million children with disabilities in India, 990,000 children aged six to 14 years are out of schools. Rashtriya Madhyamik Shiksha Abhiyan (National Secondary education Programme) a flagship programme of the MHRD (Union Government) includes components such as Girls hostel, ICT, Vocationalisation of Secondary Education. These components of RMSA have no mention of students with disabilities as a specific target group. Accessibility of the school premises is limited to 55.23% of total number of secondary schools in the country and only 17% of the schools have accessible toilets of the total schools implementing Education for the Disabled at the Secondary Stage (IEDSS).

Low Budgetary Allocation

According to World Bank Report on Education of Disabled population in India, “Overall, the spending share on inclusive education in Sarva Shiksha Abhiyan is low, at only 1 percent nationally.” Report by RTE Forum for 2015-16 says over the last five years the Sarva Shiksha Abhiyan budget has declined by 6% from Rs. 23, 873 crore (\$ 4.4 billion) in 2012 -13 to Rs. 22,500 (\$3.3 billion) for 2016-17. The UGC under the department of higher education has undergone a 50% slash. It is to be noted that these are the few programmes under the Ministry has specific component for persons with disabilities.

Unequal Employment Opportunities

Employment remains a major concern for persons with disabilities in India. According to a study by ILO, “There are 43 special employment exchanges as at December 2005 under the Ministry of Labor and Employment with large infrastructure. Besides, there are special cells in regular exchanges. These exchanges only focus on government jobs and are disconnected from the market, resulting in a poor placement rate.

The number of jobseekers placed in employment was 3,200 from the live register of 109,632.34 Among the total 661,000 people with disabilities on the live register of all exchanges, 109,929 were registered as part of special exchanges for disabled and 66,612 were registered as part of special cells for disabled of regular exchanges. Only 27% of people with disabilities registered with special exchanges, or the special cells of regular exchanges.

RECOMMENDATIONS

India must expeditiously amend all other disability specific legislations and bring them in compliance with the CRPD.

Abolish discriminatory legal provisions and make constitutional amendments to guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

The Indian government should ensure that the obligations on accessibility of public places, services, transportation, information and justice both in rural and urban areas are implemented in a time bound manner. Suitable Accessibility Standards should be formulated from time to time by adapting prevailing international standards that are suitable to Indian conditions.

The Indian government should collect and maintain comprehensive disability data to plan, formulate and implement development schemes and programmes for the promotion and protection of the rights of persons with disability.

Remove systemic barriers, including legislations and guidelines for job identification, on inclusion of persons with disabilities within Employment sector and provide CRPD friendly guidelines and safety measures within work environments.

The government of India should designate a Focal Point to monitor the implementation of the provisions of CRPD.

India should formulate focussed programme in conflict areas for persons with disabilities for providing rehabilitation, training and employment.

India should make concerted efforts to develop Indian Sign Language and promote it widely.

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