

CRITICAL REVIEW

A CRITICAL ANALYSIS OF VARIOUS LEGISLATIONS AND POLICIES ON DISABILITY IN INDIA

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It is estimated that over 600 million people, or approximately 10 per cent of the world's population, have a disability of one form or another. Developing countries have around two thirds of the disabled. Only 2 per cent of children with disabilities in the developing world receive any education or rehabilitation. In India we have 2.1 percent population with disability.

In India we have moved from charity to welfare and finally to rights based approach for persons with disabilities. We have also moved from the medical model of disability to social model which emphasizes that the society has to change in order to mainstream the persons with disability and provide them equal opportunities. In essence, this perspective on disability means viewing people with disabilities as subjects and not as objects. It entails moving away from viewing people with disabilities as problems towards viewing them as holders of rights. Importantly, it means locating problems outside the persons with disabilities.

The disability rights debate is not so much about the enjoyment of specific rights as it is about ensuring the equal effective enjoyment of all human rights, without discrimination, by people with disabilities. The non-discrimination principle helps to make human rights in general relevant in the specific context of disability, just as it does in the contexts of age, sex and children. Non-discrimination and the equal effective enjoyment of all human rights by people with disabilities, is therefore the dominant theme of the long-overdue reform in the way disability and the disabled are viewed throughout the world.

The primary responsibility for ensuring respect for the rights of persons with disabilities rests with the government. Our government has taken various steps to provide equal opportunities to persons with disabilities by enacting several Acts and implementing various policies and schemes for the empowerment of persons with disabilities. Our constitution guarantees equal rights to each individual. India is one of the first signatory to United Nations Convention on the Rights of Persons with Disabilities which means we have to adopt it in its full spirit.

Let us have an overview of various legislations and policies related to persons with disabilities

AN OVERVIEW OF THE LEGISLATIONS AND POLICIES

CONSTITUTIONAL PROVISIONS

As per the Constitution of India, under right to equality, Article 14 guarantees equality for all its citizens before law and equal protection of law and similarly, Article 15 and 16 require the States to afford real equality, prohibits discrimination on the grounds of “religion, race, caste, sex, place of birth or any of them. Further, to ensure equality in the outcome, the Constitution of India in Article 16 (3 & 4) encourages the State to frame any law, make provision for the 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. Disabled persons have the same fundamental rights as the non-disabled enjoy.

Directive Principles of State Policy have to secure a social order in promotion of the welfare of the people. The State Policy has to be directed to minimize inequalities, secure right to an adequate means of livelihood and also secure that the operation of legal system promotes justice. The State shall make provisions for ensuring the right to work, education and public assistance in case of unemployment, old age, sickness and disablement and in other cases of under-served want. The State shall endeavour to provide for free and compulsory education for all children until they complete the age of 14 years. The State has also the responsibility of promoting with special care the educational and economic interests of the weaker sections of the people. All these provisions are equally applicable to the persons with disabilities.

MENTAL HEALTH ACT, 1987

The laws relating to treatment and care of persons with mental illness was earlier regulated by the Lunacy Act, 1912. This Act was replaced by the Mental Health Act 1987, with the objective that no stigma should be attached to such illness as it is curable, particularly when diagnosed at an early stage. Persons with mental illness are a part of the inclusive society and the state shall remove all barriers to ensure that persons with mental illness have full and equal opportunities to receive treatment, care and support and live a life of dignity.

The Mental Health Act ensures that:

- Persons with mental illness gain timely admission to psychiatric hospitals or nursing homes to receive treatment.
- Persons with mental illness live in a society that is inclusive and supportive to both persons with mental illness and non-disabled persons.

- To protect persons with mental illness against abuse from others and prevent them from committing abuse.
- Persons with mental illness exercise their right to receive care and maintenance during their time of stay in psychiatric hospitals and nursing homes.
- Persons with mental illness have access to guardianship if they seek assistance in taking care or managing their own affairs.
- Stringent systems are in place to establish psychiatric hospital and nursing homes and regulate the quality of services delivered. .
- The Act also creates a central authority and state authorities for mental health services. These authorities have the responsibility to ensure the implementation of the act at the central and respective state levels.

THE REHABILITATION COUNCIL OF INDIA ACT, 1992

The Rehabilitation Council of India (RCI) Act came into force on 22nd June, 1993. The RCI Act was amended in 2000. The Act came into force in response to the need to have uniformity and ensure minimum standards and quality of education and training in the disability field. The RCI is entrusted with the responsibility to develop standardized syllabi for various rehabilitation courses, and to regulate and monitor services given to persons with disability. It also aims to maintain a Central Rehabilitation Register of all qualified professionals and personnel working in the field of Rehabilitation and Special Education. The Act also prescribes punitive action against unqualified persons delivering services to persons with disability.

The Rehabilitation Council of India Act has the twin responsibilities of Standardizing and regulating the training of personnel and professionals in the field of Rehabilitation and Special Education and maintaining a Central Rehabilitation Register for registration of professionals and personnel working in the field.

Some of the objectives of the RCI are:

- To regulate the training policies and programmes in the field of Rehabilitation of people with disabilities;
- To prescribe minimum standards of education and training of various categories of professionals dealing with people with disabilities;
- To regulate these standards in all training institutions to bring about uniformity throughout the country;
- To recognise institutions/universities running degree/diploma / certificate courses in the field of rehabilitation of the disabled and to withdraw recognition, wherever facilities are not satisfactory;
- To recognise foreign degrees/diplomas/certificates awarded by

universities / institutions on a reciprocal basis;

- To maintain Central Rehabilitation Register of persons possessing the recognised Rehabilitation qualification;
- To encourage Continuing Rehabilitation Education (CRE) for professionals trained and working in the field, in collaboration with organisations working in the field of disability;
- To promote research in rehabilitation and special education;
- To recognise Vocational Rehabilitation Centres as human resource development centres.

Various Universities, Training Institutes and NGOs conduct training programmes recognized by the Rehabilitation Council of India. These training courses range from being Foundation Course and Certificate Course to Diploma, Degree and Post Graduate Diploma courses. Training Courses are launched by both distance education and traditional face to face modes. Currently there are nearly 340 Institutions recognised by the council who are conducting 56 types of training programmes. Learners successfully completing their courses are eligible to register in the Central Rehabilitation Register maintained by the RCI. Successful learners are registered either under the 'Personnel' or the 'Professional' category depending upon the nature of training they have undergone. As a matter of fact, any rehabilitation professional wanting to practice in India in the field of disability rehabilitation must be registered by RCI. Professionals and personnel must also at specific times undergo re-training by attending various training courses in order to renew their registration.

THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (PwD Act) is the most important piece of legislation enacted by the Parliament in the history of disability movement in India. The Persons with Disabilities Act was passed in December 1995, and became enforceable on Wednesday, 7 February 1996. The passing of this Act gave effect to the proclamation on the full participation and equality of people with disabilities in the Asian and Pacific Regions.

The ESCAP (Economic and Social Commission for Asia and Pacific) declared the period 1993-2002 as the Asian and Pacific Decade of Disabled Persons. India, being a signatory to this proclamation, started the process for drafting and enacting a specific legislation that ensures equal opportunities and full participation and protects the rights of persons with disabilities. The drafting of the PwD Act was primarily led by persons with disabilities themselves with support from many like-minded professionals spanning

both government and non-government organisations.

The Act puts the responsibility on society to provide equal opportunities to persons with disabilities for their full participation in every day life. It prohibits discrimination on the ground of disability in every sphere of life and strives to create a society where persons with disability lead a life of equality and dignity.

The main objectives of the Persons with Disabilities Act are summarised as below:

- a) To ensure that the government takes responsibility for prevention of disabilities, protection of the rights of persons with disabilities, provision of medical care, education, training, employment and rehabilitation of persons with disabilities.
- b) To create a barrier-free environment for persons with disabilities.
- c) To remove any discrimination against persons with disabilities in the sharing of development benefits
- d) To protect persons with disabilities against abuses and exploitation.
- e) To lay down strategies that will ensure comprehensive programmes and services and equal opportunities for persons with disabilities.
- f) To make special provisions for including persons with disabilities in mainstream society.
- g) To establish Co-ordination Committees and Executive Committees at the Central and State levels in order to ensure the full implementation of the provisions under the Act.

The PwD Act recognises the following seven disabilities:

1. Blindness,
2. Low vision,
3. Leprosy – cured,
4. Hearing impairment,
5. Locomotor Disability,
6. Mental retardation and
7. Mental Illness

NATIONAL POLICY FOR PERSONS WITH DISABILITIES, 2006

The National Policy for Persons with Disabilities was released in February 2006. The policy was developed in response to the need to have a comprehensive document that will inform all our decisions and actions in relation to provisions for persons with disabilities.

The National Policy recognizes that persons with disabilities are valuable human resource for the country and seeks to create an environment that

provides them equal opportunities, protection of their rights and full participation in society.

The policy is committed to ensure that persons with disabilities exercise their rights through a range of equal opportunities provided through provisions in early identification and support, education, rehabilitation programmes, employment, social security, barrier-free environment, trained human resources, recreation and cultural options, and access to appropriate aids and appliances.

The policy emphasizes that children will receive education right from pre-school years to primary education, secondary, post secondary and vocational training. Children will receive this education through a continuum of educational options ranging from regular schools, community based rehabilitation programmes to home-based programmes for children with severe disabilities, who choose to receive education in this mode. Education is to be always provided by trained and qualified persons.

The policy makes a special mention of protecting the rights of young children with disabilities to access care, protection and security. It also highlights the need to ensure that children with all levels of ability are included in accessing education, recreation, rehabilitation, health and other specialized services.

Women with disabilities get a special recognition in this policy. The policy focuses on supporting programmes which will provide education, employment and rehabilitation, developed for the unique needs of women with disabilities. The policy also highlights the need to protect women with disabilities against abuse and exploitation.

The Ministry of Social Justice and Empowerment is the nodal agency to implement the provisions included in the National Policy. The Ministry coordinates the implementation of the policy in collaboration with many agencies including other related government agencies, disabled people's organizations, NGOs working in the area of disability, representatives of family or parent associations and experts and professionals.

THE NATIONAL TRUST ACT (FOR THE WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES) ACT 1999

INTRODUCTION

The National Trust is a statutory body under the Ministry of Social Justice and Empowerment, Government of India, setup under the "National Trust for the

welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities” Act (Act 44 of 1999)

OBJECTIVES

- To enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they live.
- To strengthen facilities to provide support to persons with disability.
- To extend support to registered organisations to provide need-based services during the period of crisis in the family of persons with disability.
- To deal with problems of persons with disability who do not have family support.
- To promote measures for the care and protection of persons with disability in the event of death of their parent or guardian;
- To evolve procedure for the appointment of guardians and trustees for persons with disability requiring such protection.
- To facilitate the realization of equal opportunities, protection of rights and full participation of persons with disability; and
- To do any other act which is incident to the aforesaid objects.

THRUST AREAS

- Campaign for effecting positive attitudinal change
- Programme which foster inclusion and independence by
 - Creating barrier - free environment
 - Developing skills.
 - Promoting self-help groups.
- Training and Support of Care givers and community members.
- Formation of local level committees to grant approval for guardianship.
- Development of sustainable models for Day Care, Home Based, Respite and Residential Care.
- Research in the four areas of Disabilities.
- Advocacy for the rights of persons with four disabilities.
- Programme for persons with severe disabilities and women with disabilities.

RESOURCE MOBILIZATION

- One-time contribution from Central Government
- Donations, Gifts, Grants.
- Benefactions, bequests or transfers from individuals and organisations.
- Funds in any other manner or from any other source.

PROGRAMMES

- Registration of Associations (of Parents and Non-Government Organisations).
- Formation of Local Level Committees.
- Appointment of Guardians.
- Support for a range of services including residential facilities
- Home Visiting/ Care Givers Programme.
- Development of Awareness and Training Material
- Community Participation Programme for Reach and Relief.
- Such other programmes which promote the objectives of the Trust.

COORDINATING AND IMPLEMENTING AGENCIES

- National Trust
- District level local committees.
- Registered Parents Associations and Non-Governmental Organisations.

UN CONVENTION ON THE RIGHTS OF THE PERSONS WITH DISABILITIES (UNCRPD) 2008.

The Convention sets out the human rights of persons with disabilities and the obligations on States to promote protect and ensure those rights as well as mechanisms to support implementation and monitoring.

Article 3 sets out the General Principles that apply to the enjoyment of the rights of persons with disabilities. These are:

- Respect for inherent dignity, individual autonomy, including the freedom to make one's own choices and independence of persons
- Non-discrimination
- Full and effective participation and inclusion in society
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- Equality of opportunity

- Accessibility
- Equality between men and women
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4 provides that States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end some of the points for consideration by States are as below:

- To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present convention;
- To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in Article 2 of the present convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;
- To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this convention so as to better provide the assistance and services guaranteed by those rights.

There are other provisions in this Article covering economic, social and cultural rights, consultation with the persons with disabilities including children with disabilities through their representative organizations, better services already in existence to continue and no limitations and exceptions on the basis of region.

Article 24 of the convention is about the Rights on Education which

highlights that the States Parties recognize the rights of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

- a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c) Enabling persons with disabilities to participate effectively in a free society.

The ratification of the UNCRPD sets a major challenge as to how to bridge the huge gap that exists between the standards set by this international convention and the actual position of existing services, systems and policies, in our country. India needs now to undertake a massive exercise to bring all its domestic laws, policies, rules and regulations in harmony with this international treaty called the UNCRPD.

RIGHT TO EDUCATION ACT, 2008

Right to Education is very significant for children with disabilities as this fundamental right guarantees free and compulsory education to all children from age six to fourteen years. Inclusive education for children with disabilities has received the much needed attention, resources and opportunities under this Fundamental Right. The recently enacted Right to Education Bill promotes inclusive education for children with disabilities and reaffirms its commitment to ensuring that good quality education, with the appropriate levels of support is provided by skilled teachers in a healthy school environment situated close to a child's house.

The Act lays down guidelines for bringing about positive changes in the education system that will enable all children who remain excluded from schools such as poor children, street children, migrant children, children with disabilities, girl child and so on to be an equal part of the school system and receive quality education. The Act underlines the focus on including all children into the education system without giving consideration to their challenges, difficulties, academic achievement levels and other differences. It reaffirms that the system will make necessary changes, adaptations and create support systems that will welcome all children into schools.

The Act also emphasizes on the need to train teachers who will be competent to manage a wide range of needs of children coming from diverse

backgrounds.

Children with disabilities will receive adequate and appropriate support that will enable them to move around, gather information, make friends, learn from a curriculum that responds to their needs, read and write and take examinations, participate in social and extra curricular activities at school.

The provisions of the Act will be implemented by the government at central level right through the States to the districts, blocks and villages of India. Both government and non-government agencies will work in close coordination to ensure that provisions under the Act reach every child between 6 to 14 years of age.

RECOMMENDATIONS

We need to focus on the overall mainstreaming of persons with disabilities by adopting the social model which is more inclusive and comprehensive. We need to take the spirit of UNCRPD in true sense which takes a more positive approach towards working with disability by embodying the principles of equality and the fulfilment of basic and fundamental human rights and freedoms. It calls for governments to ensure that reasonable accommodations are made for persons with disabilities to carry on their activities at par with others. The Convention also encourages governments to oblige private parties and organizations to ensure that their services are accessible to all. It further recognizes the importance of all round development of disabled individuals and calls for accommodations and accessibility in areas like recreation and sports as well in addition to the general ones like education, employment.

We as a country need to implement the UNCRPD in its true spirit. Our Government is taking various initiatives in this direction. But still the services are not reaching the persons with disabilities. They are often excluded from mainstream, denied of their human rights, face various forms of discrimination ranging from denial of educational opportunities, to segregation and isolation because of the imposition of physical and social barriers. Despite progress in terms of legislation over the past decade, violations of the rights have not been systematically addressed.

EDUCATION

Despite implementing various schemes for education of children with disabilities only 20 percent children have access to schools. The schools are not equipped to take care of their special needs. Most of the schools are not having the accessibility and the teachers do not have the knowledge and skills to deal with the needs of children with disabilities.

The in-service teachers need to be trained on various aspects of teaching children with disabilities in a planned manner to realize the objective of Right

to Education. Recently some state governments have started taking interest to train their teachers through the Foundation Course on Education of Children with disabilities being offered by IGNOU and some other open universities in collaboration with Rehabilitation Council of India. But these are not enough, the ministry of HRD needs to take up the training of in-service teachers at massive levels by utilizing the various modes of education at various levels.

It shall be worthwhile if NCTE includes the basic components related to various disabilities, inclusive education and teaching methodology in the curriculum of teacher training course of various levels so that the future teachers are equipped with the knowledge and skills for taking care of the special needs of the children with disabilities.

The special teachers training programmes being designed by RCI needs to have disability specific knowledge in the various disability related programmes i.e. the B.Ed Special Education programme in Hearing Impairment must equip the teachers in sign language and similarly B.Ed special education in visual impairment must equip the teachers in Braille and the various ICT tools.

The education services need to be made available in the rural and remote areas. Some of the areas are not having a single school where the children with disabilities can study or the teachers are not sensitive to them, the children with disabilities are just kept in the classroom for the sake of inclusion.

HEALTH

Sub-centres, PHCs, CHCs, District Hospitals also require to be equipped with regards to disability management. The curriculum of medical professionals, para professionals needs to be enriched with information on disability aspects so that prevention, early identification and intervention is done at appropriate time.

The various national programmes like Rural Health Mission, National Blindness Control Programme, National Mental Health Programme etc. must be implemented in partnership with NGOs and other stake-holders.

EMPLOYMENT

The employment to persons with disabilities must be provided in all the sectors. Although the Ministry of Social Justice and Empowerment has launched the scheme to promote the employment of persons with disabilities in the private sector but only few companies are coming forward to employ them. In Government sector also, the disabled are getting the jobs but that are also limited to certain specific disabilities. In some cases the vacancies are reserved for a specific disability and no persons are found suitable or very few

opportunities to other categories of the disabled. Advertisements take a very long time and these posts are kept vacant for years.

HOUSING

The Housing schemes should have the accessibility features. The government needs to implement it in true sense. No building plan should be approved unless it has the accessibility features. The existing buildings should also be made accessible for persons with disabilities.

POLICIES

India has very good policies in place but the implementation is not done properly which results in failure or lesser impact. The government needs to make rules for making the responsible persons more accountable for effective implementation of the policies.

SCHEMES

The various schemes launched by the government need to be flexible to accommodate the region and area specific needs. Although some schemes are available but at the time of actual implementation problems are faced i.e. some organizations get the benefit again and again while some who are in real need are not able to get the benefit. The services through these schemes are not reaching the actual beneficiaries.

LEGISLATIONS

The legislations related to disabilities are being modified as per the recommendations of the UNCRPD. We need to actualize the concept of thinking globally and acting locally by making these legislations relevant to the actual needs of the persons with disabilities.

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