



## Women and disability: International and Indian implementation mechanisms

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### Abstract

Women of all ages with any form of disability are among the multi-leveled vulnerable and marginalized of society. There is therefore need to take into account and to address international and national concerns to implement their rights in all walk of life. Gender is one of the most important categories of social organization, yet people with disabilities are often treated as asexual human beings. However women with disabilities and men with disabilities have different life experiences due to biological, psychological, economic, social, political and cultural attributes associated with being female and male. Patterns of disadvantage are often associated with differences in the social position of women and men.

Present paper explores and examines the international as well Indian endeavor to implement, protect and promote disabled women's rights with especial focus on women's disability and implementation mechanisms.

**Keywords:** psychological, economic, social, multi-leveled

### Introduction

The gendered differences are reflected in the life experiences of women with disabilities and men with disabilities. Women with disabilities face multiple discriminations and are often more disadvantaged than men with disabilities in similar circumstances. Women with disabilities are often denied equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of covert discrimination. Women with disabilities face particular disadvantages in the areas of education, work and employment, family and reproductive rights, abuse, violence and health. Disability studies have traditionally used a gender blind approach to examine the lives of people with disabilities and have neglected to explore the influence of gender in the lives of men and women with disabilities. The field of disability has not yet recognized the combined discrimination of gender and disability experienced by women who have disabilities, and policies and practices in the field have not been designed to meet the specific needs of women with disabilities<sup>[1]</sup>.

Disabled person's rights are grounded in a broad human rights framework which find place international recognition enshrined in United Nations Charter, the Universal Declaration of Human Rights<sup>[2]</sup>, international covenants<sup>[3]</sup> on human rights and other human rights instruments. On 13 December 2006, the General Assembly adopted the

Convention on the Rights of Persons with Disabilities<sup>[4]</sup>. The Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention entered into force on 3 May 2008<sup>[5]</sup>. Convention status has Signatories: 158 and Parties: 139<sup>[6]</sup>.

### International normative framework on women and girl with disabilities

Through setting international norms and standards in the form of Conventions and Declarations, international community recognizes the need for the gender perspective and the empowerment women with disabilities to achieve the equal enjoyment of all human rights and development for all, including persons with disabilities.

The World Programme of Action concerning Disabled Persons states that the consequences of deficiencies and disablement are particularly serious for women. Generally women are subjected to social, cultural and economic disadvantages, making it more difficult for them to take part in community life.

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities<sup>[7]</sup>, recall the provisions in the Convention on the Elimination of all Forms of Discrimination against Women<sup>[8]</sup> to ensure the rights of girls and women with disabilities, and includes references to women and girls

<sup>1</sup> <http://dawn.thot.net/disability.html>

<sup>2</sup> A/RES/217 A (III)

<sup>3</sup> Bone of Human Rights Bill are two covenants: first one is International Covenant on Economic, Social and Cultural Rights (16 Dec. 1966) available at A/RES/2200 A (XXI); other is

International Covenant on Civil and Political Rights and [First] Optional Protocol (16 Dec. 1966) available at A/RES/2200 A (XXI)

<sup>4</sup>The above Convention was adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. In accordance with its article 42, the Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

<sup>5</sup> See <http://www.un.org/womenwatch/enable> accessed on 11/11/2013

<sup>6</sup> See [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en) accessed by 11/11/2013

<sup>7</sup> A/RES/48/96

<sup>8</sup> A/RES/34/180

with disabilities under several Rules, such as Rule 4 on Support services, Rule 6 on Education, and Rule 9 on Family life and personal integrity.

Additionally, in its two resolutions on realizing the Millennium Development Goals for persons with disabilities, the General Assembly called for the incorporation of a gender perspective. General Assembly resolution 63/150 of 18 December 2008 urges States to pay special attention to the gender specific needs of persons with disabilities, including by taking measures to ensure their full and effective enjoyment of all human rights and fundamental freedoms. General Assembly resolution 64/131 of 18 December 2009, calls on Governments to enable persons with disabilities to participate as agents and beneficiaries of development, in particular in all efforts aimed at achieving the Millennium Development Goals, by ensuring that programmes and policies to promoting gender equality and empowerment of women and improving maternal health, among others, are inclusive of and accessible to persons with disabilities.

The Beijing Platform for Action adopted by the Fourth World Conference on Women: Action for Equality, Development and Peace, Beijing, 15 September 1995, and the outcome of the twenty-third special session on further actions and initiatives to implement the Beijing Declaration and Platform for Action recognize that women with disabilities face additional barriers to achieving gender equality, and call for action at all levels to address and take into consideration their concern. Additionally, the outcome of the twenty-third special session recognizes that discrimination against women with disabilities is an obstacle to the full enjoyment of their human rights and as a barrier to the implementation of the Beijing Declaration and Platform for Action.

The text of the Convention on the Rights of Persons with Disabilities contains an article on women with disabilities, as well as several references to girls, women, and gender issues<sup>19</sup>. The Convention on the Rights of the Persons with

Disabilities recognizes that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. To address this concern, the Convention on the Rights of the Persons with Disabilities has also taken a two track approach to promoting gender equality and the empowerment of women with disabilities. It has as one of its principles equality between men and women, and it devotes an article to women with disabilities.

### **Implementation framework of convention's rights of women with disabilities**

The Optional Protocol of Convention on the Rights of Person with Disabilities establishes two procedures aimed at strengthening the implementation and monitoring of the Convention. The first is an individual communications procedure allowing individuals to bring petitions to the Committee claiming breaches of their rights; the second is an inquiry procedure giving the Committee authority to undertake inquiries of grave or systematic violations of the Convention.

### **Individual communication procedure under optional protocol to the CRPD**

The Optional Protocol to the Convention creates an individual communications procedure. Committee considers communications from individuals or group of individuals claiming to be victims of a violation of the provisions of the Convention by a State Party. The Committee inspects the communication and the observations of the State, and on this basis formulates its views and recommendations, if any, forwards them to the State, and makes them public.

States Parties to the Optional Protocol recognize the authority of the Committee on the Rights of Persons with Disabilities to receive individual complaints alleging violations of any of the provisions of the CRPD. This is known as a quasi-judicial procedure-it is not a court, nor is the decision legally-binding, however it is adversarial and there is a publicly available decision

### **Inquiries under optional protocol to CRPD**

The Optional Protocol creates an inquiry procedure. Committee member may conduct an inquiry on a State Party. If the Committee receives reliable information indicating grave or systematic violations by a State party to the Optional Protocol of any of the provisions of the Convention, the Committee may invite the State in question to respond to such information. After considering the State party's observations the Committee may designate one or more of its members to conduct an inquiry and issue a report urgently. If the State agrees, the Committee may visit the country in question. After undertaking the inquiry, the Committee transmits its findings to the State which has six months to submit further observations. The Committee eventually summarizes its findings which it makes public.

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<sup>9</sup> Preamble

(p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

(q) Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

(s) Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

Article 3 - General Principles

The principles of the present Convention shall be:

(g) Equality between men and women;

Article 6 – Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discriminations, and in this regard shall take measures to ensure the full and equal enjoyment by them of all their human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Other references to women and gender issues are found in the following articles:

Article 8 – Awareness-raising (paragraph b)

Article 16 – Freedom from exploitation, violence and abuse (paragraphs 1,2,4,5)

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Article 25 – Health (paragraph a)

Article 28 - Adequate standard of living and social protection (paragraph 2b)

Article 34 – Committee on the Rights of Persons with Disabilities (paragraph 4)

It is worth noting that both these additional procedures can, as a result of experience in relation to other human rights treaties, be very effective in considering the protection of rights of specific individuals. But unfortunately, India is neither signed nor ratified it, i.e. No any individual can attract to the Committee constituted under convention against violation of rights enshrined in convention.

### **Implementation under CEDAW**

CEDAW has made three recommendations that address disability <sup>[10]</sup>. Two of these reflect a protective approach to women with disabilities. One calls for insurance to cover “the disabled” and the second to strengthen current policies aimed at combating violence, with special attention given to women with disabilities and migrant and minority women. Insurance is an essential issue, but with the focus only being on this, CEDAW has again reinforced that persons with disabilities are in need of protection. Similarly, violence against women with disabilities is a very important issue, but again reinforcing the view that women with disabilities are in need of “special” protection. Issues such as participation, employment, education, and sexual and reproductive rights have been ignored.

Committee on the Elimination of Discrimination against Women in its General Recommendation No. 18 (Tenth session, 1991) <sup>[11]</sup>, recommended that States parties provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life.

In this way CEDAW enforce the rights of women with disability through the process of its Reporting System <sup>[12]</sup>.

### **Implementation under CRC**

The Committee on the Rights of the Child requires States parties to report according to “clusters” of obligations, which the Committee has devised. Article 23, addressing children with disabilities, is clustered under “Basic Health and Welfare”. This has unfortunately led to disability being further marginalized as a welfare issue. Only two Concluding Comments addressed the right to life of children with disabilities, despite the data available on the killing or withholding of life saving medical treatment for children with disabilities <sup>[13]</sup>.

Despite widespread abandonment of children with disabilities, only eight concluding comments mentioned children with disabilities under the cluster of “Family Environment and Alternative Care”. This absence is even more surprising given that “many disabled children are living in institutions where little effort is made to promote opportunities for rehabilitation with their families and where the standards of care are extremely poor - inadequate food, health care, access to

education, protection from violence or opportunities for social inclusion <sup>[14]</sup>.”

### **Indian legal framework for women with disabilities**

India is original member of the CRPD signed first day as it opened for signature i.e. 30-3-2007, India was the 7th country in the world and the first significant country to do so and ratified it by 1-10-2007. India in the process of CRPD negotiation agreed and stressed inclusion of disabled mother and girls in proposed convention <sup>[15]</sup>. In the preparation of draft India has plays an important role, Only 4 countries sent drafts. India was one of them. Ministry of Social Justice and Empowerment had discussions with NGOs, lawyers and with other Ministries to finalise the draft. There were two areas in which India’s attempts remained unsuccessful – one was to involve parents associations. This was completely negated by the rest of the international community, except Costa Rica, Kenya and to some extent Israel. The second was to have a special focus group on persons with multiple & severe disabilities.

The Union Cabinet in India approved the ratification of UNCRPD without the Optional Protocol. So for India neither signed nor ratified the optional Protocol, in effect of that India is exempted from implementation of Communication procedure and Inquiries by CRPD committee.

India’s position with regard to ratification is, when a complaint is made, an independent international body can come into India and scrutinise and an international body comes only when all the internal remedies – National Human Rights Commission (NHRC), High Courts & Supreme Court - have failed- which India never accepted. The Government’s view is that India has strong internal systems in place. Therefore, we do not need Optional Protocol. NGOs, on the other hand, say that if we have strong institutions, then we should not worry about external scrutiny.

India adopted a number of measure to implement the international obligation to protect the rights of person with disability e.g. legislation and administrative measures to promote the human rights of persons with disabilities; protect and promote the rights of persons with disabilities in all policies and programmes; stop any practice that breaches the rights of persons with disabilities; ensure that the public sector respects the rights of persons with disabilities; ensure that the private sector and individuals respect the rights of persons with disabilities; undertake research and development of accessible goods, services and technology for persons with disabilities and encourage others to undertake such research; provide accessible information about assistive technology to persons with disabilities; promote training on the rights of the Convention to professionals and staff who work with persons with disabilities; consult with and involve persons with

<sup>10</sup> <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

<sup>11</sup> <http://www.un.org/womenwatch/enable/> accessed on 11/11/13

<sup>12</sup> Each State Party to the CEDAW submit the Report to the Committee for its consideration

<sup>13</sup> See for detail study [www.unhchr.org](http://www.unhchr.org)

<sup>14</sup> Ibid

<sup>15</sup> Background document: Towards a Gender Sensitive Disability Rights Convention, Side event to the Second session of the Ad Hoc Committee, 20 June 2003 on the issue right to access health services and family life India among stress that in many cultures and countries disabled girls and women have the least access to health services and disabled mothers are often neglected and discriminated against by health and family planning programs. Yet they are the primary caregivers both in the family and in health services. See also for detail study <http://www.un.org/esa/socdev/enable/rights/gender>

disabilities in developing and implementing legislation and policies and in decision-making processes that concern them.

### Indian constitution and legislations

Preamble followed by Fundamental Rights and Directive Principal for State Policy of Indian Constitution makes provision not only on the basis of nondiscrimination however protective form towards women which naturally inherit women with disability. Art 15(3) explicitly written to protect the laws which positively discriminate in favor of women.

To address the issues of person with disability Indian Government enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The enforcement mechanisms envisaged in the Act include a Central Coordination Committee at the national level and a State Coordination Committee at the state level. It also includes Chief Commissioner (Persons with Disabilities) at the national level and Commissioner (Persons with Disabilities) at the state level.

The central and state level coordination committees are entrusted primarily with the task of facilitating continuous evolution of comprehensive policy on disability in the areas of their respective jurisdiction. The Chief Commissioner and the Commissioner (Persons with Disabilities), as the case maybe, are entrusted primarily with the task of monitoring disbursement and utilization of funds on disability allocated to various government departments and also to take cognizance of cases of violation of rights of persons with disabilities.

Ministry of Social Justice and Empowerment, Government of India had constituted a committee to suggest amendments in the existing PWD Act. It may be useful to write a new law rather than amending the present one in the light of international instrument signed by India. Act seems to have gained momentum in the wake of India ratifying the UN Convention of the Rights of Persons with Disabilities. In continuance of the said process, the Ministry of Social Justice and Empowerment, Government of India, has vide Govt. notification F. No. 16-38/2006 - DD.III dated 30th April 2010 has constituted a committee to draft a new law and submit the following to the government on or before 31 August 2010:

- a. The draft of the new law
- b. Note on requirement of financial resources for the purpose of implementing the proposed new law
- c. The process followed in evolving the new draft law.

### Other National Laws related to Disability

There are four Laws pertaining to disabilities in India:

1. The Mental Health Act, 1987
2. The Rehabilitation Council of India Act, 1992
3. The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
4. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

Apart from these laws, India also has the National Policy for Persons with Disabilities which was adopted in 2006.

### Indian Courts

Supreme Court and High Courts of India too endeavor the

enforcement of rights of person with disability. Indian Supreme Court has ruled on a number of occasions that when an international commitment increases the rights protection of the citizenry, then such rights could become available to the people even directly from the International instrument without an enacted national legislation<sup>16</sup>.

The Supreme Court of India upheld the right to motherhood of a girl with intellectual disability<sup>17</sup>, who was raped at a government-run shelter. The woman was against the termination. Moreover, she was in the 19th week of pregnancy. An interim order was passed in July making reference to the UNCRPD. It stated that "in respecting the personal autonomy of mentally retarded persons with regard to the reproductive choice of continuing or terminating a pregnancy, the MTP Act lays down such a procedure. We must also bear in mind that India has ratified the Convention on the Rights of Persons with Disabilities (CRPD) on October 1, 2007 and the contents of the same are binding on our legal system."

In *Dr. Jagdish Saran & Ors. v. Union of India*<sup>18</sup> Justice Krishna Iyer clarified that even apart from Articles 15 (3) and (4), equality is not degraded or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistently with the general good and individual merit.

### Conclusion

Persistence of certain cultural, legal and institutional barriers makes women and girls with disabilities the victims of two-fold discrimination: as women and as persons with disabilities. The Convention is the milestone to protect the rights of, *intra alia*, women and girl with disabilities. The challenge of implementing the Convention is manifold as need for training, capacity building, awareness raising, good practices collection and validation, knowledge management, mainstream disability in all development activities, to include persons with disabilities in all stages of implementation, and build capacity of organizations of persons with disabilities to do so<sup>19</sup>.

Ministry of Social Justice and Empowerment, Government of India endeavor to implement the rights of person with disabilities in form of enactment, policies and financial assistance to women with disabilities. Indian Supreme Court being a guardian of rights of citizen too alert to protect the rights of women with disabilities.

India enacted a number of laws to meet the issues of person with disabilities but did not pay much attention on gender discrimination with disabilities, hope to new laws on person with disabilities must be address the issues of women with disabilities prominently.

<sup>16</sup> Suchita Srivastava & ANR. vs Chandigarh Administration, (C.A.NO.5845 OF 2009 @ Petition(s) for Special Leave to Appeal (Civil) No(s).17985/2009)

<sup>17</sup>Suchita Srivastava & ANR. vs Chandigarh Administration, (C.A.NO.5845 OF 2009 @ Petition(s) for Special Leave to Appeal (Civil) No(s).17985/2009)

<sup>18</sup> (1980 2 SCC 768),

<sup>19</sup>Further actions and initiatives to implement the Beijing Declaration and Platform for Action", General Assembly Resolution S-23/3 of 10 June 2000, annex, paragraph 63

**Reference**

1. The Constitution of India, 1950.
2. The United Nations Charter, 1945.
3. UN Convention on the Rights of Persons with Disabilities
4. Declaration on the Elimination of Discrimination against Women, 1967.
5. Convention on the Elimination of All Forms of Discrimination against Women, 1979.
6. Convention on the Elimination of All Forms of Discrimination against Women: Optional Protocol, 1999.
7. The United Nations Convention on the Rights of the Child, 1989.
8. The Mental Health Act, 1987.
9. The Rehabilitation Council of India Act, 1992.
10. The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
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