

**Original Article**

## **Rights of Differently Abled Persons in India: A Comparative Analysis of UNCRPD and Rights of Persons with Disabilities Bill 2014**

**Aparna Singh\*, Sony Singh\*\***

### **Author Affiliation**

\*Assistant Professor Law, Dr. Ram Manohar Lohiya National Law University, Lucknow-226012.

\*\*LL.M, Babasaheb Bhimrao Ambedkar (Central) University Lucknow-226025.

### **Reprint Request**

**Aparna Singh**, Assistant Professor Law, Dr. Ram Manohar Lohiya National Law University, Lucknow-226012.  
E-mail: [greeneyearna@gmail.com](mailto:greeneyearna@gmail.com)

### **Abstract**

India is a signatory of the UN Convention on the Rights of Person with Disability (UNCRPD). The three important obligations arise out of the convention namely, implementation of provisions of UNCRPD, harmonization of Indian Laws with UNCRPD and preparation of a country report by 2010. Critical analysis of the Right of Persons with Disabilities Bill, 2014 and taking into consideration the extent of compliance and with the obligations imposed by UN Convention on rights of persons with disabilities thereby, reflecting the substantive contribution of the convention to disability law in India. While disability rights are at this nascent stage, both as legal and academic concepts, the need to strengthen and deepen our understanding of the disability agenda is urgent, especially, if we are to strategically promote disabled peoples' distinctive needs and experiences within the broader equality debate [1]. At the same time that the Disability Discrimination Act 1995 was enacted in Britain, the PWD Act came into force in India from 1 January 1996. Prior to this, disability-related discrimination was never addressed in India either in the Constitution under Chapter III, which contains the fundamental rights, or by any other statute. The Constitution, while protecting equality under Articles 14, 15, and 16, does not include disability as one of the categories for non-discrimination. The only mention of protection of persons facing disability and sickness was made in the Directive Principles of State Policy in Chapter IV of the Constitution (there is no guarantee from the State to prevent discrimination due to disability)[2]. The present Right of Persons with Disabilities Bill, 2014 and PWD Act was itself an outcome of India's obligations as a signatory to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and Pacific Region, adopted at the meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002, convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing from 1 to 5 December 1992. Therefore, the CRPD would also give impetus for a review and amendment of the PWD Act and Right of Person with Disability Bill, 2014 to incorporate its new principles and requirements. Fundamental rights such as the right to education and the right to employment and livelihood that essentially stem

from the right to life guaranteed in Article 21 do not specifically address disability related issues. It is only in the Directive Principles of State Policy under Article 39A & 41 that disability is briefly mentioned [3]. These principles direct the State through this article to make effective provisions for securing the right to work, to education, and to public assistance in cases of unemployment, old age, sickness disablement. Justice Sinha notes that even the provisions of Article 41 should be implemented in consonance with the complementary principles of non-discrimination and reasonable differentiation [4]. Article 39A imposes upon the State a duty to ensure that “opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”.<sup>5</sup>The only legislation enacted prior to the PWD Act and Right of Persons with Disabilities Bill, 2014, which covered persons with disabilities, was the Mental Health Act of 1987. This Act does not address the issues of legal capacity and rights of persons with mental disabilities, but only provides for their guardianship and institutionalization and, therefore, cannot be considered as a legislation addressing disability-based discrimination. Persons with disability were included in welfare schemes and were referred to as ‘physically handicapped’ or ‘PH’. Token affirmative measures were taken by the State in reserving posts in government services that is civil services legislations, purely as welfare measures and not as antidiscrimination measures. However, this was very limited and the extent of reservation for persons with disability was not uniform throughout the country. In this context, the enactment of the PWD Act is remarkable because for the first time in India since 1995, social and economic rights of persons with disability have been addressed by any statute. One can say that it has the potential to probably become India’s first anti-discrimination law, or in the words of Fredman, an ‘equality law’.<sup>6</sup>

**Keywords:** Differently Abled Persons; PWD; UNCRPD; Disability; Discrimination; Institutionalization etc.

## Introduction

Disability law in India prior to the 1990s was effectively only a sub-category of social welfare law and protectionist legislation. Early laws dealing with people with disabilities consisted of legislations such as the Indian Lunacy Act 1912, which categorized people with mental and intellectual disabilities as ‘lunatics’ and provided for their guardianship and care. This was replaced with the Mental Health Act in 1987, but even this statute focused entirely on providing for the guardianship and institutionalization of persons with mental and intellectual disabilities. In other legislations relating to social welfare or public employment, some welfare provisions were made for persons with disabilities by reserving some categories of jobs for disabled persons. Hence, disability laws in India had twin effects, there was a paternalistic denial of legal

capacity for persons with mental and intellectual disabilities and on the other hand the only welfare measure provided was reservation in employment.

To amend PWD Act 1995, there was a Committee set up headed by Smt. Sudha Kaul to draft a Bill to this effect. The Draft Bill of 2011 was submitted to the Ministry. Thereafter the Draft, went to the various Cabinet Ministries, and then circulated among States. Finally, it was introduced in the Rajya Sabha on February 7, 2013 by the Minister of Social Justice and Empowerment, Mr. Mallikarjun Kharge, the Bill repeals the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995. The Rights of Persons with Disabilities Bill was meant to be an enactment to codify India’s obligations under the UNCRPD. This bill tries to make a paradigm shift from a Charity model to Rights based model and b) Medical model of disability to Social model of disability.

*Comparing united nations convention on the rights of persons with disabilities 2006 & the rights of persons with disabilities bill, 2014(RPWD bill, 2014)*

Articles	UNCRPD	RPWD bill 2014
5	Equality and non-discrimination	Have been addressed and discussed in Clause-3
6	Women with disabilities	No such special provision but Discussed and provisions are made across the Bill in clause 3(2), 9,23(3)[d], 24(2)[k] & 36(a, b), 38
7	Children with disabilities	No such special provision but discussed and provisions are made across the Bill in clause 3(2), 15, 30,16, 23, 24 and best interests principle has been addressed but limited in scope and no explicit recognition to respect to evolving capacity of children
8	Awareness-raising	Have been addressed in Clause 38
9	Accessibility	Present Clause 39, 40 & 41
10	Right to life	Not discussed specifically in the Bill
11	Situations of risk and humanitarian emergencies	Present and have been elaborated in detail Clause 6 (7)
12	Equal recognition before law	Have been addressed in Clause 12 but in partial form.
13	Access to justice	Have been addressed in Clause 11
14	Liberty and security of person	Have been addressed in Clause 3(4)
15	Freedom of torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.	Have been addressed in Clause 5
16	Freedom from exploitation, violence and abuse	Present in Clause 6
17	Protecting the integrity of the person	Present in Clause 3(1)
18	Liberty of movement and nationality	Not discussed
19	Living independently and being included in the community	Present in Clause 4
20	Personal mobility	Present in Clause 23(3)(f)
21	Freedom of expression and opinion, and access to information.	Not discussed
22	Respect for privacy	No provisions
23	Respect for home and the family	Present in Clause 8&9
24	Education	Have been discussed in clause 15-17 explicitly incorporating the concept of reasonable accommodation.
25	Health	Have been discussed in clause 24 in terms of accessibility. This clause seeks to provide for the appropriate Government and local authorities to take measures to provide free and barrier free access to health care facilities in the vicinity and also casts responsibilities on them to promote health care and prevent occurrence of disability
26	Habilitation and rehabilitation	Have been discussed in clause 26 The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

27	Work and employment	Present in Clause 19 & 35
28	Adequate standard of living and social protection	Present in Clause 23 The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and

### *Merits of the Bill*

The Bill states that persons with disabilities shall have the right to equality and shall not be discriminated against on grounds of their disability. Rights of disabled persons include protection from inhuman treatment and equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters. All existing public buildings shall be made accessible for disabled persons within five years of the regulations being formulated by the National Commission for Persons with Disabilities. No establishment will be granted permission to build any structure, issued a completion certification or allowed to occupy a building, if the building does not adhere to the regulations formulated by the Commission. The Bill provides for the access to inclusive education, vocational training and self-employment of disabled persons, concept of reasonable accommodation. All government institutions of higher education and those getting aid from the government are required to reserve at least five percent of seats for persons with benchmark disabilities. The central and state governments have to identify posts in establishments under them to be reserved for persons with benchmark disabilities. At least five percent of the vacancies are to be filled by persons or class of persons with at least 40 percent of any of the disabilities [1]. Of this, one per cent shall be reserved for persons with;

- (i) blindness and low vision;
- (ii) hearing and speech impairment;
- (iii) locomotor disability;
- (iv) autism, intellectual disability and mental illness; and
- (v) Multiple disabilities.

The Bill provides that the reservation has to be computed on the basis of total number of vacancies in the strength of a cadre [2]. To comply with the Article 12 of UNCRPD, the Bill also discusses and accommodates Legal Capacity. Disabled persons have the right, equally with others, to own and inherit movable and immovable property, as well as control their financial affairs. Further, special provisions are made for persons with mental illness with regard to guardianship. The Bill provides that if a district court finds that a mentally ill person is not capable of taking care of him or of taking legally

binding decisions, it may order guardianship to the person. The nature of such guardianship is also specified. The Bill also states that no person with disability shall be subject to any medical procedure which leads to infertility without his or her free consent under Clause 9 [3]. The Bill places obligations on the central and state governments to establish a National and State Commissions for Persons with Disabilities, respectively. The Commissions will be composed of experts and be required to:

- (i) Identify any laws, policies or programmes that are inconsistent with the Act,
- (ii) Inquire into matters relating to deprivation of rights and safeguards available to disabled persons,
- (iii) Monitor implementation of the Act and utilization of funds disbursed by governments for the benefit of disabled persons. On comparing UNCRPD and the Rights of Persons with Disabilities Bill, 2014 it becomes clear that the drafter of the bill have taken utmost precautions to be inclusive and also to fulfil the obligations of CRPD.

### *Shortcomings of the Bill 2014 in Comparison with the UNCRPD*

#### *Article 1, Purpose*

The Convention seeks to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. To this end, the definition of "persons with disabilities" is an inclusive definition, and include those "who have 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." Thus, the definition links the barriers which exist in society to the impairment and therefore moves away from the medical approach to the social approach. The Bill, in Clause (q), curtails the definition under the UNCRPD, and limits the definition of "persons with disabilities" to "long term physical, mental, intellectual or sensory impairment which hinder his full and effective participation in society equally with others". By removing the reference to barriers, the focus is on the impairment of the person, which goes entirely against the purport of the UNCRPD, that the focus should be on removal

of the barriers that exist in society, and not focusing on the impairment [4].

#### *Article 3, General Principles*

One of the General Principles of the Convention is the respect for difference and acceptance of persons with disabilities as part of human diversity and humanity. The Draft Bill does a great disservice by the inclusion of Clause 24 (2) and the stress on "Prevention of Disabilities" in sub clauses (a) and (b). While there is no doubt that many disabilities are preventable, this becomes the prerogative of the Ministry of Health and associated bodies, and not that of the Ministry of Social Justice and Empowerment which is responsible for the well being of persons with disabilities. To single out a group of persons to be essentially a "failure to prevent" by the State violates the Purpose under Article 1 of the UNCRPD to promote respect for the inherent dignity of persons with disabilities. Similarly, disability is not a curse or an ailment that a person "suffers from" – unlike what the Bill states while defining "Special Employment Exchanges" under Section 2 (w). The inclusion of a primary prevention provision in a disability rights charter is stigmatizing of persons with disabilities as it is virtually saying that persons with disabilities do not have the right to live.

#### *Article 5, Equality and Non Discrimination*

According to the UNCRPD, State Parties are to grant an unconditional Right to Equality and Non Discrimination to all persons with disabilities, on par with others. The Bill does not impose a positive obligation to promote equality in the same manner that the CRPD does. Article 5(2) of the CRPD obligates State Parties to "prohibit all discrimination" and "guarantee...equal and effective legal protection against discrimination on all grounds. In the Bill, the Right to Equality is curtailed under Clause 3 (3), which says that the right against discrimination exists "unless it can be shown that the impugned act or omission is a proportionate means of achieving a legitimate aim". The terms "proportionate means" and "legitimate aim" are highly subjective, and this could be a means of perpetuating discrimination. As a matter of fact, the term "discrimination on the basis of disability", comprehensively defined under the UNCRPD, does not even find mention in this Bill. The positive duty to provide reasonable accommodation to guarantee equality is not resonated in Clause 3 of the Bill as given under Article 5(3) of the UNCRPD.

#### *Article 9, Accessibility*

The UNCRPD has extremely wide ranging provisions on accessibility, and extends it to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. Thus it is clear that it extends to buildings, services etc. which are provided both by the State as well as by Private Entities. In Clause-39 of the Bill, standards of accessibility are delegated to the National Commission 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. The Section only speaks of standards, and not enforcing them. Further, the next following Sections severely clamp down on what the UNCRPD provides. In Clause-40, the facilities for persons with disabilities at bus stops, railway stations and airports appear to require to conform to the accessibility standards (presumably laid down by the National Commission) relating only to parking spaces, toilets, ticketing counters and ticketing machines. The limiting of accessibility standards to these 4 areas is inexplicable. Secondly, the access to public transport is also severely limited. It is only mandated wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design. This is extremely vague and means that in practice, it would never actually be implemented. In the light of this, any "incentives and concessions" for persons with disabilities would be entirely meaningless. Accessibility to be provided "to the maximum of its available resources" Article 4 (2) of the UNCRPD rather than "within the limits of economic capacity". Section 43, which deals with "mandatory observance of accessibility norms", violates the UNCRPD extension of accessibility measures to all services and places "open or provided to the public". The interpretation of this is not limiting it to Government Buildings. However, the Section limits mandatory observance of accessibility norms only to "establishments", defined under Section 2 (h) to mean "a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 and includes Department of a Government". Thus, all other buildings are excluded from its purview, which makes the provision meaningless to persons with disabilities. The common thread that runs through

these Sections is access to the physical environment and moving around the same, in a strictly physical sense. The use of terms like transport, roads, and reference to completion certificates for possession of buildings etc. indicate that stress is on the built environment and therefore physical access. However, the question of assistance which is outside the physical movement requirements, like sign language interpretation, or Braille/large print signage, or other forms of specialized live assistance, is excluded from this, which are expressly provided for in Sub-clause 2 (d) and (e) of the Article [5].

#### *Article 12, Equal Protection before the Law*

One of the hallmarks of the UNCRPD is the recognition of legal capacity for all persons with disabilities. Neither of the statements of Article 12(1) & (2) have been reflected in the Bill in Clause 12. The Clause also refers to “support arrangements” without making any mention of safeguards, unlike the protocol mandated under the UNCRPD States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law [6]. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interest.<sup>7</sup> Clause 13 of the Bill refers to guardianship, and only concerns the “mentally ill”, presumably as defined under Schedule 1 of the Bill. The wording of the Section is that the limited guardian “shall take all legally binding decisions on his or her behalf, in consultation with that person”. The Clause is unambiguous that the ultimate decision making power lies with the guardian, whereas the shift should be from substituted decision making to supported decision making. Though persons with disabilities are granted the right to own or inherit property; control their financial affairs; obtain access to bank loans, mortgages and other forms of financial credit in Clause 12 (1), there is no effective manner of realizing these rights, and the right under Article 12 of the UNCRPD to not to be arbitrarily deprived of their property is absent.

#### *Article 14, Liberty and Security of Person*

The Bill supports institutionalization and Chapter IX and does not specifically bar any institutionalization which is without a person’s consent, either by a family member or at the instance of the Assessment Board in respect of persons with “high support needs”. Section 51 speaks of returning a person with disability in a derecognized institution “restored to the custody of his or her parent or spouse or lawful guardian” or “transferring them to any other institution” which once again goes back to the violation of Article 12 of not recognizing persons with disabilities are persons before the law. It is also worth pointing out that since the institutionalization under this Chapter is for all persons with disabilities, it gives further credence to the understanding that legal capacity is in question for all persons with disabilities, and not just those under the Mental Health/National Trust Act[8]. The right of protection against scientific experimentation or testing except with the free and informed consent of the individual is seriously compromised by the recognition of guardians under Section 13 who are empowered to take “all legally binding decisions” on behalf of their wards.

#### *Article 16, Freedom from Exploitation, Violence and Abuse*

While the proposed Section 6 details many steps towards effective realization of this freedom it misses out an extremely crucial requirement of the UNCRPD – that in order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties are obligated to ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities. This is especially relevant with regard to the encouragement given to institutionalization and guardianship under the Bill. The lack of monitoring mechanisms, which have been long criticized as encouraging the abuse of persons with disabilities, is a violation of the UNCRPD [9]. Article 17, Protecting the Integrity of the Person: Though Section 3 says that the “appropriate Government shall ensure that the persons with disabilities enjoy... respect for his or her integrity equally with others”, the Bill fails to reiterate the specific wording of the UNCRPD that “(e) every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.” The use of the words physical and mental integrity are important, and are obviously left out by the drafters of the Bill, because by allowing for institutionalization and

guardianship, neither physical nor mental integrity of persons with disabilities are respected.

*Article 19, Living Independently and Being Included in the Community*

The Bill, in Section 4, curtails the rights granted under the UNCRPD by retaining only the negative right i.e. of not being forced to live in any particular living arrangement, and not the positive right of having the opportunity to choose their place of residence and where and with whom they live on an equal basis with others. This potentially creates obstacles when looking at the effective realization of the rights under Article 23 of the UNCRPD as well [10].

*Article 21, Freedom of Expression and Opinion, and Access to Information*

The UNCRPD recognizes the States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice. Communication has a very specific definition in Article 2, and includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology. Languages are defined as well in Article 2 and include spoken and signed languages and other forms of non spoken languages. While the definition of communication is incorporated in the Bill, with minor grammatical changes, the definition of "language" is absent. This is highly problematic, as there is no specific recognition of sign language [11].

*Article 23, Respect for Home and the Family*

The Bill states that no person with disability shall be subject to any medical procedure which leads to infertility without his or her free consent, in Section 9 (2). For persons with psychosocial disabilities, who will be placed under guardianship under Section 13 of the proposed Bill, the question of their own consent does not arise as their guardian, be it limited or plenary, is empowered to take "all legally binding decisions" on their behalf. In addition, the right under the UNCRPD for all persons with disabilities who

are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses, is gravely threatened by the failure of the Bill to categorically grant legal capacity to all persons with disabilities. Those under a system of guardianship will still be unable to exercise this right [12].

*Article 24, Education*

The UNCRPD mandates State parties to ensure that persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability. It further stipulates that persons with disabilities have the right to access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live, Clause 30. The second part of the clause states that every child with benchmark disabilities has a right to education in a neighbourhood school, or in a special school, "if necessary". There is no clarity as to who is to determine the necessity. If the child falls under the category of "high support needs", then this decision may be carried out by the assessment board. The question of where the child should study should be decided, as far as possible, by the children themselves, according to Article 7 of the UNCRPD, which grants children with disabilities the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right. This decision can also be taken by the parents of the child, as per Article 26 of the Universal Declaration of Human Rights which recognizes that parents have a prior right to choose the kind of education that shall be given to their children. By not specifying and prioritizing who deems the move to special schools "necessary", there is a violation of the UNCRPD. There is no transition plan to move a set up with adequate number of trained teachers and proper infrastructure. Without such a plan, it is likely that an entire generation of persons with some types of disabilities such as children who are deaf-blind (requiring specialized training) and children in wheelchairs (requiring accessible infrastructure) who join the ill-equipped mainstream school system immediately after enactment will be lost in the cracks and get no education whatsoever. The government must

address this and elaborate the long-term strategy for inclusive education [13].

#### *Article 27, Work and Employment*

This Article mandates that, under sub-clause (i) that State Parties should ensure that “reasonable accommodation is provided to persons with disabilities in the workplace”. Reasonable accommodation is a specific term defined under the UNCRPD and “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.” In Clause 2 of the proposed Bill, the term finds a slightly modified definition and means “necessary and appropriate modification and adjustments without imposing disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.” Be that as it may, Clause 19 of the proposed Bill which pertains to “non discrimination in employment”, merely specifies that every establishment shall provide “appropriate environment” to persons with disabilities. “Appropriate environment” is not defined under the Bill. Therefore, the provisions relating to the workplace environment with respect to persons with disabilities is extremely vague and not in compliance with the UNCRPD. This could even mean, for example, sheltered and segregated workshops [14].

Clause 32 of the proposed Bill speaks of the identification of posts which can be reserved for persons with benchmark disabilities. This is violative of the UNCRPD in as much as the present Article provides for the prohibition of discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions. Interestingly, the term “discrimination on the basis of disability”, defined under the UNCRPD, is omitted from the proposed Bill, for reasons best known to the drafting committee. Discrimination on the basis of disability is defined to be mean “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of

discrimination, including denial of reasonable accommodation.” By denying reasonable accommodation to persons with disabilities in employment, and by granting the State powers to identify posts for reservation, which is a distinction which has the effect of impairing the rights of persons with disabilities, the drafting committee appears to be guilty of discrimination on the basis of disability themselves. Lastly, by the denial of legal capacity to persons with disabilities, it is difficult to envisage them being eligible for any job prospects because of their possible inability to sign the basic contract of employment [15].

#### *Article 29, Participation in Political and Public Life*

Clause 10 of the proposed Bill speaks of “accessibility in voting” and states that the Election Commission of India and the State Election Commission shall ensure that all polling stations are accessible to persons with disabilities and that all materials related to the electoral process are easily understandable by and accessible to them. This is severely limiting the scope of Article 29 – which does not limit the participation of persons with disabilities only to voting but also recognizes the right and opportunity to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate, forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels. In fact, the Bill itself contains express disqualifications for persons who have become “physically and mentally incapable of acting as a member” in Clause 89 (for members of the State Commission) thus completely violating the UNCRPD [16].

#### *Article 30, Participation in Cultural Life, Recreation, Leisure and Sport*

Clause 28 of the Bill deals with “culture and recreation”, in an attempt to comply with the UNCRPD. However, the approach of the Bill, with its focus on making mainstream instances of “culture” and “recreation” – like scouting, dancing, outdoor camps, adventure activities – loses the purport of the Article [17]. While the Article undoubtedly speaks of making mainstream cultural activities accessible to persons with disabilities, one of the most important Rights under the Article is that persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including

sign languages and deaf culture. This is lost under the Bill, and is therefore a very serious violation of the Right. Clause 29, which deals with "sporting activities", loses out on an important provision of the Article – to encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels. The Bill does not refer to mainstream sports, and without that specification, the Bill seems to lean towards limiting persons with disabilities to only disability specific sports.

## Conclusion

While equality, non-discrimination and access are all guaranteed for all persons with disabilities, most entitlements relating to education and employment under the Bill are only for persons with benchmark disabilities and reproduces the medical model of understanding disability that is prevalent in the PWD Act. Under the chapter of education, the right to free and compulsory education, the provision of free books, assistive devices, and scholarships are restricted to children with benchmark disabilities. Reservation of seats in higher education is also limited to students with benchmark disabilities [18]. Even in the case of employment, the reservation in public employment is restricted to persons with benchmark disabilities, the schemes for concessional allotment of land, and other poverty alleviation schemes are also only for persons with benchmark disabilities. The provision for seeking high support from the government in the form of any intensive physical or psychological support required for a person for his or her daily activities including education, employment, and therapy can also only be made by a person with benchmark disability.

While the number of disabilities covered under the "benchmark disabilities" is increased from 7 to 19, this is certainly not the way forward for a legislation aimed to address full protection of rights of persons with disabilities. It was to remove such exclusions from rights guaranteed under the PWD Act, that a broad and all-encompassing definition for persons with disabilities was recommended by the disability rights movement. Further, the definition of benchmark disability still requires the person prove medically that he or she has 40% or more of the said disability. Such a narrow definition of disability is based on the assumption that only severely disabled persons, i.e. persons whose disability is more than 40%, are in need for any entitlements under the law. This, in turn, presumes that disability discrimination is actually and only

invoked by a certain degree of impairment, which again locates the problem of disability discrimination inside the individual victim. This kind of a two definition structure within the draft Bill creates a second class status for all persons who do not have a benchmark disability, as they would not be entitled for any of the tangible benefits listed above. If the Bill is passed in this form, the law would have failed to internalize the key message of the disability rights movement that disability has to be understood not as an attribute of an individual, but, rather, a complex collection of conditions and barriers, many of which are created by the social environment. From this perspective, disability cannot be medically defined as any specified number of conditions with a percentage of severity. If such a definition of benchmark disabilities is retained in the RPD Bill, it would just be a case of repackaging the old PWD Act in a new bottle.

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