



Disability Rights Promotion International

Monitoring the Human Rights of Persons with Disabilities:

Laws, Policies and Programs in India

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Disability Rights Monitor (DRPI): Written Report

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[NOTE: This report collates and summarises the findings of the Disability Rights Monitoring Project that attempted a detailed assessment and mapping of policy relating to persons with disabilities in India. Sharifa Siddiqui and Pallavi Gupta provided research and editorial assistance. All the sources are cited in full in the template].

1. CONSTITUTIONAL POSITION

What is the constitutional position on disability in India? While the Indian Constitution prohibits discrimination per se, it does not explicitly prohibit discrimination on grounds of disability. However, a seven judge constitutional bench of the Supreme Court of India in *Indra Sawhney vs. Union of India*¹ held that the “spirit of Articles 14 [right to equality] 15(1) [right against discrimination] and 16 [right against discrimination in public employment]” allowed for discrimination and affirmative actions for persons with disabilities. As a result of this decision, the Constitution may be read as explicitly prohibiting discrimination against persons with disabilities. The fundamental right to life enshrined in the Indian Constitution provides the guarantee of life with liberty and dignity to all persons resident in India. The right of persons with disabilities to respect, dignity and freedom is part of this generic right to life. However, the recognition of disability as part of a larger terrain of human diversity is something that has not yet entered official discourse on disability rights. Article 21 of the Constitution of India protects the Right to Life and Personal Liberty, which are inclusive of the principles of inherent dignity and individual autonomy for all persons resident in India. This, together with Article 14, the Right to Equality before law provide the conditioning environment for specific laws and policies that uphold fundamental rights for different classes of individuals.

The range of provisions and mechanisms that have been put in place consequent on legislation and policy with reference to special measures demonstrates the constitutional commitment to strengthen nondiscrimination through affirmative action. With reference to persons with disabilities this has taken the form of incentives, reservations and targeted schemes for inclusion into the mainstream. The view that special measures are necessary to combat inequality, and an expression of the equality principle, is one that has a very long legislative history in India, originating in the demand of a special measures for “depressed classes” prior to independence.

¹ 1992 Supp (3) SCC 217

In *Article 15(2)* states that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to- access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. The overarching object of this Article is to guarantee access without discrimination.

Articles 15(3) and 15(4) of the Constitution establishes a very positive role for the State. They encourage introduction of special measures in favour of women, children, Scheduled castes and Scheduled tribes, and other members of socially and educationally backward classes.

Although the Supreme Court in *Indra Sawney and Ors vs. Union of India*² held that 15(1) covers persons with disabilities while 15(2) (3) 8 (4) do not, the latter can be interpreted as conditioning the application of 15 (1) in matter of unhindered access.

However there is also a constitutional denial of the right to vote for persons with psychiatric and intellectual disabilities³.

There is a clearly discernible disjuncture between the treatment of persons with disabilities other than mental disability on the one hand, where the focus is on affirmative action, and persons with mental disability on the other, where protections and special measures tend to take the form of custody and negation ranging from mild to severe methods. The denial of suffrage to persons with mental disabilities under *Article 326* of the Constitution is one specific example that betrays a basic inequality between legal protections provided.

2. NATIONAL POLICY AND LEGISLATIVE FRAMEWORK

The *National Policy for Persons with Disabilities, 2006*⁴, specifically addresses the need to apply the Constitutional vision to persons with disabilities. The Policy proposes amendments to existing legislation that impact on persons with disabilities. However, this process has not yet gathered momentum. As a result, the situation of persons with disabilities on the ground remains largely unchanged. This is evident through shadow reports⁵ published from time to time by disability rights groups in India. In the realm of policy however we witness a sudden awareness about the criticality of disability issues both in the deliberations of the planning commission and the Ministry of Education.

² Ibid 1

³ Under Article 326 of the Indian Constitution

⁴ <http://socialjustice.nic.in/disabled/national%20policy-%20English.pdf>

⁵ www.ncpedp.org/policy/pol-res02.htm

The *National Policy for Persons with Disabilities, 2006* asserts the principle of full participation and inclusion. Drawing on figures from the National Census of 2001, which put the illiteracy rate among persons with disabilities at 51%, the policy proposes a sector-wise strategy for inclusion and full participation.⁶ Teaching methods, languages, communication and assistive devices in educational institutions under this policy will be inclusive of all disability conditions. The policy envisages setting up model schools for inclusive education. Inclusive schools will co-exist with special schools for children with severe disabilities that require special environments. The educational needs of non-literate adults with disabilities will be addressed through setting up of adult learning centres. Distance learning programmes and the national open school will broaden the base of formal education to persons with disabilities.

A similar initiative has been proposed in the field of higher education. The policy also proposes strengthening of existing affirmative action in public employment and the adoption of proactive measures like incentives and tax waivers for private employers employing persons with disabilities; and proposes initiatives that will facilitate the modification in design of machinery and implements at the workplace to ensure full work place participation by persons with disabilities.

The principle of equality of opportunity for persons with disabilities particularly in education and public employment is fairly well enunciated in Indian policy and judicial decision-making as is evident from the case law cited in the template. The *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*⁷ asserts the principle of equality of opportunity. In addition there is an ongoing effort to set up an Equal Opportunity Commission that will address the question specifically for persons with disabilities as well as other classes that face systemic discrimination. In addition, *the Persons with Disabilities Act (1995)* includes measures specifically designed to counter discrimination faced by those with disabilities. Special legislations and policy initiatives follow this principle.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 defines “disability” under section 2 (i) as blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation, mental illness. A “person with disability” is defined under this statute as “a person suffering from not less than 40% of any disability as certified by a medical authority.” The definition under this act does not address the barriers that hinder access and full participation.

However the *National Policy for Persons with Disabilities, 2006* recognises the existence of barriers in the social environment. The definition of the person with disability under this policy includes “persons with visual, hearing, speech, locomotor and mental disabilities.” The policy then recognizes the impact of

⁶ <http://socialjustice.nic.in/disabled/national%20policy-%20English.pdf>

⁷ <http://www.ccdisabilities.nic.in/Act%201.htm>

social environment on disability particularly in terms of access and full recognition: “Seventy five per cent of persons with disabilities live in rural areas, 49 per cent of the disabled population is literate and only 34 per cent are employed. The earlier emphasis on medical rehabilitation has now been replaced by an emphasis on social rehabilitation. There has been an increasing recognition of abilities of persons with disabilities and emphasis on mainstreaming them in the society based on their capabilities.”⁸

The right to barrier free access and environments has increasingly been recognized as indispensable to the full participation of persons with disabilities in civil society. The creation of barrier free environments, social security measures for persons with disabilities and their families, and the creation of supporting infrastructure at the community level are other areas addressed by the national policy. All public endeavours, the Sarva Shiksha Abhiyaan⁹ and the University Grants Commission for example, address the need to create barrier free environments. Even prior to the adoption of national policy for persons with disabilities, the *ambulift cases*¹⁰ highlighted the need for persons with disabilities to dignified access to airplanes. On the ground however even public institutions have not begun as a rule to create barrier free access. So this remains largely a commitment on paper. Several disability rights groups have expressed concern about the situation on the ground.

The *National Policy for Persons with Disabilities, 2006*, addresses the concern of “reasonable accommodation” especially with reference to the progressive elimination of architectural barriers, and provision of transport under the Integrated Education for Children with Disabilities scheme and with reference to the modification of machinery and equipment to suit the needs of persons with disabilities in the workplace. It requires the state to take all appropriate steps to ensure reasonable accommodation. However, the monitoring mechanisms that will measure the extent and effectiveness of the steps are not yet in place, nor are there any sanctions that make the adoption of such steps non-negotiable. The principle of reasonable accommodation, like the right to barrier free access, is therefore one that is recognized in policy. Government reports suggest that concrete measures are underway to realize this principle. We do not have enough information however of the actual implementation of these measures. There are however obstructions still in place in the law, that prevent persons with disabilities, designated by the fuzzy term “infirmity or bodily defect” from entering into judicial services as is evident in the judicial services rules of the state of Andhra Pradesh. The policy also details the specific measures in terms of public health, rehabilitation and assistive devices that enhance the potential of persons with disabilities to enjoy a better quality of life and access information at all levels.

⁸ Ibid 6

⁹ http://www.education.nic.in/Elementarynew/ssa/ssa_5.asp

¹⁰ Javed Abidi v Union of India 1999 AIR (SC) 512

The *Protection of Human Rights Act 1993*¹¹ offers a general protection to all persons resident in India and is deemed to be an inclusive protection which by definition offers protection for persons with disabilities against human rights violations. While the National Human Rights Commission, set up under the *Protection of Human Rights Act, 1993* is charged with the responsibility of protecting human rights of all persons, it has interpreted this with reference to persons with disabilities primarily in terms of access to education and employment and welfare, as is evident from the case law on disability handled by the NHRC. There have been over the years, sporadic reports of gross violations of human rights particularly of people in custodial institutions, which have been interpreted by the courts under the fundamental right to life liberty and equality in Indian Constitution. It is also now customary for human rights groups in India to use the commitments to international instruments as a tool to demand compliance from the Indian government. To that extent, the ratification of the Disability Rights Convention itself is a powerful tool that is now available to persons with disabilities within India.

3. COMPLIANCE TO STANDARDS

Disaggregating policy commitments is extremely important, because it is through this process that implementation is effectively achieved. One of the most important features of the Tenth Five Year Plan was that it advocated the introduction of a '*Composite Plan for the Disabled*' in the budget of all the concerned Ministries/Departments for this purpose¹². If Ministries like those for education, railways, roadways, rural development, urban development, labour, communication and information technology, civil aviation, tourism, information & broadcasting, and various Commissions for child rights/women's rights /human rights/minorities, etc, allocated a percentage of their annual budget to the implementation of the concerned provisions of The Persons with Disabilities Act, 1995, or initiated of new schemes/facilities for disabled citizens, the face of the country would change. However, none of the Annual Reports of various Central Ministries mentioned the Composite Plan, as envisaged by the Tenth Plan.

The office of the Chief Commissioner for Persons With Disabilities¹³ is responsible for investigating complaints of deprivation of rights of persons with disabilities and non-implementation of laws and rules at all levels of the state. It has been able to ensure with a fair degree of success that the rights of persons with disabilities with respect to education and employment are not violated particularly by public employers. In addition the Supreme Court has held that persons with disabilities can claim specific protection under the equality code of the Constitution of India. In the *Dalip Kumar* decision¹⁴, by upholding the primacy

¹¹ <http://nhrc.nic.in/Publications/HRAct.htm>

¹² <http://www.ncpedp.org/policy/pol-res02.htm>

¹³ <http://www.ccdisabilities.nic.in>

¹⁴ Dalip Kumar vs. AIIMS Delhi High Court 2008 (not reported judgment).
<http://www.hrln.org/issue.php?id=6&pil=1&pilid=109>

of the *Persons with Disabilities Act* as *lex specialis* over general legislation, the court went a step further in delineating the non-negotiable elements of nondiscrimination with reference to persons with disabilities. In 2007, the Kerala High Court ruled similarly in *Bharat Sanchar Nigam Limited vs Chief Commissioner For Persons With Disabilities*¹⁵ that the Commissioner is entitled to investigate grievances regarding deprivation of rights of persons with disabilities. Several cases, including *Secretary (Education) and others v Mukesh Chand*¹⁶ (2003) and *Baljeet Singh vs Delhi Transport Corporation*¹⁷ (Delhi High Court, 2000), have also reinforced the basic authority of the Persons with Disabilities Act, ensuring that those individuals whose rights have been violated have access to an effective remedy of the situation.

In several cases, courts have also imposed sanctions on institutions that have neglected to comply with legislation protecting the rights of the disabled, including *Secretary, Primary and Secondary Education Department, Bangalore and Others vs Nagaveni M.C. and Another*¹⁸ (Karnataka High Court), 2008 and *Pushkar Singh and Others vs University of Delhi and Others*¹⁹ (Delhi High Court), 2001.

Not all rulings have been as supportive of the rights of persons with disabilities, however. In *Sunil Raosaheb Narke vs Air India and Another*²⁰ (Bombay High Court, 2006), the court ruled in favor of the petitioner, but neglected to impose sanctions and dismissed the case with only an advisory in favor of the rights of the disabled. Further, in the case of *Ratheesh Babu. G vs. University Grants Commission*²¹ (Kerala High Court, 2004), the Court did not rule in favor of requiring the State Government to make reservations for persons with physical disabilities in certain categories in government service.

Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 provides for a reservation of 3% in the vacancies in identified posts (1% each for persons with blindness or low vision, hearing impairment and locomotor disability or cerebral palsy) in Government establishments including the Public Sector Undertakings.

Section 41 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 provides for incentives to employers to ensure that at least five percent of their work force was composed of persons with disabilities.

¹⁵ 2007 (2) KLT 797

¹⁶ CASE NO WP(C) No.2869 of 2003

¹⁷ 2000 (3) LLJ 339

¹⁸ 2008 (1) KarLJ 53

¹⁹ 2001 (90) DLT 36

²⁰ 2006 (1) CLR 717

²¹ W. A. No. 1347 of 2004

The *National Policy for Persons with Disabilities*, which was adopted in 2006 also lays down that pro-active measures will be taken to provide incentives, awards, tax exemptions etc. to encourage employment of persons with disabilities in private sector.

However, the Shadow Report on the status of persons with disabilities raises several concerns. The *Persons with Disabilities Act, 1995*, provides for 3% reservation in jobs of Government establishments and Public Sector Undertakings in identified posts. However, the available annual reports of Chief Commissioner for Persons with Disabilities, the Ministry of Social Justice and Empowerment or the Ministry of Labour provide no information on the status of its implementation in the past four years in terms of the percentage of disabled persons employed in Government services. While lakhs of disabled people remain on the live registers of employment exchanges, the Government manages to place only about 4,000 disabled people every year into jobs through its Employment Exchanges. Apart from these, there are thousands of others, who are either under-employed, do not have information about these employment exchanges, or find them unapproachable in terms of access, language, attitudes, etc. Many others are registered with private placement agencies.

In the entire country, there are only 17 *Vocational Rehabilitation Centres (V.R.C.)* run by the Government for disabled people. While 30,390 clients were admitted during 2003, the number of clients rehabilitated was only 9,292. People with disabilities continue to be trained in spice-making, cane-weaving, candle making, block printing and the manufacture of stationary items, whether in Government or in non-governmental organisations. Year after year they are trained in skills that do not help them to earn a decent living. The training does not match the skill/qualification requirement in the job market. Even for self-employment, other relevant skills like purchase of raw material, marketing, functional literacy & numeracy, banking, etc. are neglected.

4. GENDER AND DISABILITY

The 2001 Census estimates that there are over 9 million women with disabilities in India constituting 3.5% of the population. Some researches estimate that there are over 35 million women with disabilities in India (Bacquer and Sharma 1997)²². Others put the figure at 20 million, 98% of them are illiterate: less than 1% can avail healthcare and rehabilitation services (Action Aid 2003 15). But these statistics are only the tip of the iceberg when it comes to gauging the level of neglect, isolation stigma and deprivation that characterise their lives. The majority of women with disabilities in India suffer the *triple discrimination of being female, being disabled and being poor*. Indeed not only are they a socially invisible category but their plight is worse than both men with disabilities and other non-disabled women. Being powerless, isolated and anonymous women with disabilities are extremely vulnerable to abuse and violence.

²² http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_rpwoman.pdf

While no specific disability law mentions women as a category that requires special attention, the XI Plan observes that "Women with disabilities . . . are considered a financial burden and social liability by their families; they are denied opportunities movement outside the home and access to education; they are viewed as asexual, helpless and dependant . . . they [are] isolated and neglected with no home of a normal life." It goes on to state that "the specific concerns of women with disabilities have found a place neither in the government policies and programmes nor the voluntary sector," a situation which was only begun to be rectified by the women's movement in the Beijing declaration of 1995.

Thus the XI Plan for the first time considers the situation of women with disabilities in all its complexity, focusing on the need for an intersectional understanding of discrimination in order for policy to be effective. The vulnerability of poor women to triple discrimination - poverty, gender and disability - marks this document out in significant ways. Alongside this, the document deliberates on the ways in which the gender-based division of labour places women with disabilities at an added disadvantage both at the family and community level. The national policy for persons of disability addresses these concerns as well, though not as comprehensively as the plan document does. The plan document provides a framework for future government and non-government action to strengthen the position of women with disabilities.

However the government is now serious about addressing the issue vis-à-vis women as seen in its *Report of the Working Group on Empowerment of Women for the XI Plan Ministry of Women and Child Development Government of India*²³.

It recommends among other things that women with disabilities should be included not only as beneficiaries from gender equity but also as fieldworker and project facilitators, survey designers and field investigators in projects with disability components to enhance their visibility in highly positive roles and challenge negative attitudes that reduce them to objects of pity and helplessness.

In an important statement, it says there should also be a separate wing for women with disabilities in the Disability Commissioners office. Women with disabilities should be represented on the Central and state co-ordination and executive Committees.

5. RIGHT TO EDUCATION

The rights of children with disabilities are addressed primarily, if not exclusively, through the medium of universal education, Article 21A of the Constitution of India. Drawing on this the enunciation of the *zero rejection policy* by the Sarva Shiksha Abhiyan (SSA), and the special strategies in this programme to draw children with disabilities into the mainstream of education, are significant. The SSA goal of the Universalization of Elementary Education (UEE) necessarily

²³ http://planningcommission.nic.in/aboutus/committee/wrgrp11/wg11_rpwoman.pdf

meant that children with disabilities be included. One of SSA's missions, therefore, is to ensure that every child with a disability is provided a quality education in a learning environment best suited to his or her needs. SSA maintains an emphasis on including children with special needs in mainstream schooling whenever possible by providing pre-integration programmes when needed, as well as adequate in-school support.

The newly established National Commission for the Protection of Child Rights²⁴, although it does not address the question of children with disabilities centrally, does provide umbrella protection to children as a specific vulnerable category against all human rights abuses—a protection that applies more strongly to more vulnerable sections of children, for instance we could argue, children with disabilities.

Further, the 86th Amendment makes free and compulsory education for all children ages 6-14 a fundamental right, and Section 26 of the Persons with Disabilities Act (1995) requires the State "ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years."

However, an alternate report on the Education of Disabled Children and Youth²⁵ enumerates the failures of SSA to deliver these educational opportunities to children with special needs, and criticizes the "lack of clear vision at the policy level to meet the education needs of children with different impairments." It notes that the Annual Report of Ministry of Human Resource Development (2003-2004) neglected to mention disabled children under SSA, and did not provide details on the numbers of children with disabilities enrolled in primary schools. Further, it reports that the University Grants Commission, which initiated a plan in 1998 to promote higher education for disabled students, has succeeded in ensuring benefits for disabled students at only 30 of approximately 300 universities in the country.

Article 21 A of the Constitution of India guarantees the right to education to all children which includes children with disabilities. The PWD Act contains explicit provisions on education for children with disabilities, schemes and programmes for non-formal education, develop trained manpower for schools, transport facilities and supply of books for children with disabilities. There are Specific provisions regarding education for children under the Sarva Shiksha Abhiyaan - Interventions for children with special needs.

An examination of the process of implementation and general school education for children with disabilities clearly shows that proper implementation and monitoring mechanisms are required to ensure the rights of all persons with

²⁴ <http://ncpcr.gov.in/index.htm>

²⁵ <http://www.ncpedp.org/policy/pol-res02.htm>.

disabilities to education. A survey by National Centre for Promotion of Employment for Disabled People of 89 schools across the country found that a mere 0.5 percent of the total number of students were those with disabilities, though the Persons with Disabilities Act recommends a reservation of three percent of seats in institutions funded by the government.

Eighteen of the schools surveyed acknowledged that they did not admit students with disabilities. Twenty percent of the schools polled were not aware of the 1995 Disability Act at all. While girls comprised 41.6 percent of the total student population, among children with disabilities, the percentage of girls was only 33.²⁶

There are about Sixteen Categories of Professionals/Personnel training on Special Education courses are conducted for adults and children by the Rehabilitation Council of India.²⁷ The lack of awareness about these educational training programmes and schemes for persons with disability is a major barrier to accessing rights. For e.g. only 50% of the 119 Universities reported being aware of the UGC Schemes. The remaining 50% did not know of any such Schemes – the notable ones among them were National Institute of Mental Health & Sciences (Bangalore), Indian Institute of Technology (Chennai and Kanpur), School of Planning and Architecture (New Delhi), Tata Institute of Fundamental Research, Lucknow University, and Nalsar University of Law (Hyderabad)²⁸.

The courts have in most cases upheld the right to education for persons with disabilities. The Delhi High court in the case of Dr Kunal Kumar v. Union of India & Others²⁹ observed that a person suffering from color vision deficiency is not completely blind to red and green colors but may have some trouble differentiating between certain colors. Moreover, the Court noted that there is no condition in the admission rules or the regulations of the Medical Council of India debarring a candidate with color blindness from his admission to the medical course.³⁰

In 1998, the All India Confederation of the Blind filed a writ petition in the Supreme Court seeking direction to ensure availability, in Braille, of all textbooks according to the revised syllabus of NCERT to the visually impaired students without delay. In its interim order dated 28.10.2003, the Court directed 'considering the fact that schools will reopen in May, 2004 it would be appropriate that text-books be made available latest by 31st March, 2004 and not later.'

The Delhi Association of the Deaf has filed an application before the NHRC alleging that in India there are a number of sign languages in use and these languages differ from place to place and are quite inadequate in meeting the

²⁶ <http://www.indiatogether.org/2006/jan/edu-speced.htm>

²⁷ <http://www.rehabcouncil.nic.in/faq.htm>

²⁸ <http://www.aifo.it/english/resources/online/books/cbr/incedu-india%20NCPEDP%20audit.pdf>

²⁹ CW No 4608/2002

³⁰ <http://www.disabilityindia.org/colorBlindness.cfm>

educational requirements of deaf children. Therefore, it is important to develop a Standard Sign language to meet the educational, training and employment needs of the deaf people. After investigating the status of sign languages for deaf children in India, the NHRC is convinced that a child-centered sign language is an important element of the right to education. For its development and popularization, the Commission believes collaborative action by the Government, linguists, deaf persons and their families, and interpreters are essential.³¹

The challenge is to develop inclusive educational programmes and services which recognize the use of sign languages and Braille as the mode of communication. Awareness programmes need to be conducted for teachers and staff in educational institutions whether private or public to create an inclusive society free from discrimination.

6. FREEDOM OF MOVEMENT

Section 45 of *The Persons with Disabilities Act, 1995* gives details of the provisions on public **roads** to make them accessible. According to a section in the annual report of Ministry of Social Justice and Empowerment, the Office of the Chief Commissioner for Persons with Disabilities conducted **access audits** of *four* Government Buildings in Delhi during the whole year, including a railway ticket reservation centre, a coffee home, an electricity board office and the Delhi Airport! As per the annual report of Ministry of Urban Development & Poverty Alleviation (2003-2004), the Government has issued Notifications amending the unified building by-laws to meet social environmental requirements such as providing barrier free environment in buildings for people with disabilities. Despite the provisions in The Persons with Disabilities Act, 1995, and the notification, constructions full of barriers continue all over the country. In a recent initiative of the Ministry of Tourism & Culture, revised guidelines were issued to simplify the procedure for **classification of hotels** and approval of hotel projects. The guidelines included that 'new projects will be required to adopt environment-friendly practices and facilities for physically challenged persons. And existing hotels being classified will need to conform to a phased plan for adding eco-friendly practices and facilities for physically challenged persons'.

The right to liberty and freedom of movement is part of the fundamental rights that are available to all citizens under article 21 and article 19 of the Indian Constitution. Article 14 of the Constitution provides equality before the law and equal protection of the laws to all persons. With respect to persons with disabilities however, the right movement and liberty must be examined in conjunction with the provision of special measures that enable persons with disabilities to exercise the right to the freedom of movement.

A limited number of efforts have been made across the country to ensure ease and liberty of movement for persons with disabilities. Some cities have made

³¹ <http://nhrc.nic.in/Publications/Disability/Chapter06.html>

progress in this area, with Mumbai introducing disabled-friendly buses after being ordered to do so by a Bombay High Court order, and Delhi's Metro Rail Corporation opening one accessible transportation route. In addition, the Supreme Court ruled in *Javed Abidi vs Union of India*³² (1999) that Indian airlines must not only make their aircrafts more accessible, but provide 50% concession to all disabled persons as defined in the Persons with Disabilities Act. However, a shadow report on Access to Transport and Built Environment declared that most public transport remains inadequate for people with disabilities. In addition, many annual reports of government establishments, such as that of the Department of Road Transport and Highways (2003-2004) and that of the Ministry of Civil Aviation (2003-2004), simply neglects to include information on facilities extended to persons with disabilities. Thus by and large exercising the right to freedom of movement continues to be a Herculean task for persons with disabilities.

While there are reservations of seats, and subsidies on travel, physical access to spaces and systems of transportation continue to obstruct the free entry and exit of persons with disabilities.

7. THE CRIMINAL JUSTICE SYSTEM

India has not ratified the Convention against torture. There are of course mechanisms that have been put in place by human rights movements in the country to force state accountability with respect to torture particularly in custody. And these mechanisms apply equally to persons of disabilities.

The Criminal Procedure Code³³ contains measures designed to protect persons with psychiatric disabilities from facing trial. Article 328 dictates that if a Magistrate determines that "a person against whom [an] inquiry is being held is of unsound mind and consequently incapable of making his defence," he is required to "postpone further proceedings in the case." Article 330 instructs the Magistrate or Court to "order the accused to be detained in a safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government."

It has been a cause of concern that there have been more than a couple of instances of torture in custody that have resulted in disabilities under trials and convicted prisoners -- blinding suspects in prison (the Bhagalpur blindings), women subjected to sexual torture in custody becoming "mentally ill" are known cases. There have been instances where private facilities for persons with intellectual disabilities have violated norms by chaining inmates to beds, or practicing other forms of degrading and inhuman treatment. The justification for the forced hysterectomies of women with intellectual disabilities in a government facility in Pune, was that they are vulnerable to assault, and therefore should at

³² 1999 AIR (SC) 512

³³ <http://nrcw.nic.in/shared/sublinkimages/70.htm>

least be protected against pregnancy, speaking to concerns of security against violence and exploitation for women of within Mental Health facilities.

One specific law is for persons with mental disabilities only not mentioning persons with physical disabilities. Section 81 (Chapter VIII) of the Mental Health Act³⁴ of 1987 provides that "no mentally ill person should be subject during treatment to any indignity (whether physical or mental) or cruelty." Several important cases have reinforced this principle.

In the case of *Sheela Barse vs. Union of India*³⁵ (1986), the Court criticized the seemingly widespread practice of keeping children with mental and physical disabilities in jail for "safe custody," and placed responsibility on the State Government to move them to an environment where they could receive proper care, medical treatment, and vocational training when possible.

The case of *Veena Sethi vs State of Bihar*³⁶ (1982) also addressed the practice of keeping mentally ill persons in jail, where the Court declared that all mentally ill inmates must be examined every six months and released immediately if they are found to have no mental illness. In addition, it reaffirmed the principle that there should be an adequate number of institutions for persons with psychiatric disabilities, and that jail should not be considered an appropriate location for providing "safe custody."

Several cases have addressed the deeply inhumane conditions of many institutions established to provide care for persons with psychiatric. In *Dr. Upendra Baxi vs. State of Uttar Pradesh*³⁷ (1983), the Supreme Court ordered a medical panel to evaluate the inmates at the Agra Home. The report demonstrated that though a majority of inmates had varying degrees of mental disability, some had been released by the Superintendent without being evaluated and had not been provided any means by which to travel to their home towns. The Court recommended that psychiatric treatment be provided.

In *Rakesh Chandra Narayan vs State of Bihar*³⁸ (1989), the Supreme Court found the conditions in the Mental Hospital near Ranchi to be inhumane, and appointed a committee to visit the site and submit a report about the establishment's operations and standards of care.

In the case of *S.P. Sathé vs. State of Maharashtra*³⁹ (1984), the Bombay High Court regulated the administration of electroconvulsive therapy (ECT) to mentally ill persons after hearing of the conditions at the Institute of Psychiatry and Human

³⁴ <http://www.disabilityindia.org/mentalact.cfm>

³⁵ (1986) 3 SCC 632, Vide order dated 15.4.1986

³⁶ 1983 AIR(SC) 339

³⁷ (1983) 2 SCC 308

³⁸ (1989) SUPP 1 SCC 644

³⁹ Writ Petition No 1537 of 1984, Bombay www.cehat.org/humanrights/caselaws.pdf

Behavior in Panaji, Goa. Patients at the IPBH were reportedly given ECT without anaesthesia, a practice which could lead to general discomfort as well as bone fractures and dislocations. In addition, the IPBH neglected to obtain informed consent from the patients before administering the treatment. In *Chandan Kumar Banik vs. State of West Bengal*⁴⁰ (1995), the Supreme Court criticized the inhumane conditions at the Mankundu Mental Hospital in the District of Hooghli, banned the practice of restricting patients with iron chains, and instead ordered drug treatment for them. In Tamil Nadu, in *Re vs. Union of India*⁴¹ (2002), the Supreme Court ordered each State to undertake a survey of every institution offering psychiatric care to ensure that all were following the prescribed standards set out in the Mental Health Act of 1987.

8. ENHANCING KNOWLEDGE AND ACCESS

Article 19 of the *Constitution of India* guarantees to all Citizens the Right to Freedom of Speech and Expression. This is a generic right that applies to Persons with Disabilities who are Citizens of India. The *Persons with Disabilities Act 1995* places the responsibility on appropriate government and local authorities to facilitate full and free expression of this freedom through the introduction of flexibility in the examination system and the curriculum that will benefit in particular children with visual and hearing impairments.

The right to free speech, and expression and the right information for persons with disabilities can only be realized through the entrenchment of multiple media communication in everyday level. While all citizens of India have the right to freedom of speech and expression, under article 19 of the Indian Constitution, and while all citizens have the right to information under the right information act, realizing this right depends on the provision of information and the enabling of speech and expression in diverse ways -- sign language, Braille, and the range of audio, visual, electronic and print communication. The recognition of the need to put special mechanisms in place in order to realize the fundamental right to speech of persons with disabilities is one that has not yet been made.

The *National Policy for Persons with Disabilities* commits the state to undertake research in the socio-economic and cultural context, cause of disabilities, early childhood education methodologies and development of user friendly aids and appliances. It also aims to support research on “all matters connected with disabilities which will significantly alter the quality of life and civil society’s ability to respond to their concerns. The Ministry of Science and Technology will be required under the policy to set up a Rehabilitation Technology Centre for coordinating and undertaking research and development.

⁴⁰ [(1995) Supp. 4 SCC 505]

⁴¹ (2002) 3 SCC 31

The *National Policy* also addresses communication needs by making information service and public documents accessible through Braille, tape service, large print and other appropriate technologies. The *National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999*⁴² enables persons with disability to live independently, while being close to the community and drawing support from their families. Persons with disabilities who do not have family support will, under the mandate of the Trust, be supported by registered organisations or guardians and trustees appointed through an established procedure. Programmes supported by *The National Trust Act* aim at creating a conducive environment in the community, counselling family members and carers, and promoting foster family care and day care for persons who need it. The objective of *The National Trust Act* is to facilitate the realisation of equal opportunities, and the protection of rights and full participation of persons with disability. *Vision 2020*⁴³, the policy statement put out by The Ministry of Social Justice and Empowerment, Government of India, envisions “a society which is truly inclusive and egalitarian, where every individual, including persons with disabilities, have equal opportunities for access to the services they need in order to develop their full potential. Recognising the link between poverty, health and social vulnerability, the *Vision 2020* statement envisages “the creation of an environment where all preventable diseases and disabilities are prevented through a much cleaner, non polluting, hygienic environment and sanitary living conditions including availability of potable drinking water..... complete food security and special care including immunisation.... so that there is no consequent disability. By 2020, the society at large will be aware of issues such as the importance of prevention of disability by simple life style changes.... which has an inter generational impact on mortality, morbidity and disability.”

The Eleventh Five Year Plan proposes a determined effort to mainstream the hitherto neglected needs of persons with hearing and/or speech impairment and aims at providing access to information in all its forms.

The promotion of awareness on issues of disability, although it is high on the agenda of the Ministry of Social Justice and Empowerment, occupies a marginal position in the public space and exists in episodic fashion, not systematic or concerted. The efforts of civil society groups in promoting awareness on the other hand are commendable.

While the Broadcasting Corporation of India⁴⁴ has as one of its primary objectives the promotion of positive images of “children, the blind, and the elderly”, state-run channels do very little to create an enabling environment and the media for persons with disabilities. Here as well, it is independent filmmakers who focus on the issue of disabilities with sensitivity and commitment.

⁴² <http://thenationaltrust.in/NewWeb/Schemes.html>

⁴³ http://www.planningcommission.nic.in/reports/genrep/bkpap2020/30_bg2020.pdf

⁴⁴ <http://mib.nic.in/informationb/media/actsrules/1990.htm>

9. COUNTING ABILITY

The debate around the Census of 2001 and the inclusion in the census of a question on disability has opened critical space for the collection of data on disabilities crossed sectorally. The 11th plan process reflects this concern as well. The environment created by the Disability Rights Convention process has had a critical impact on the data gathering and research thrust in policy.

The Office of Registrar General of India conducts Population Censuses at an interval of ten years since 1881. Indian Population Census has been providing some useful data on the “physical infirmities” from its inception. The census questionnaire of 1872 called “House Register” included questions on physical disabilities like “the blind, the deaf and the dumb”. But due to constraints in enumeration, the quality of data collected through the Population Censuses was not satisfactory and thus the practice was discontinued after 1931. No attempt was, therefore, made to collect information on disability through censuses of 1951, 1961 and 1971. Collection of certain important information on persons with physical disabilities was again taken up in 1981 census. Declaration of the year 1981 as the international year for the disabled persons by the United Nations was also a reason for taking up the aspect of disability in the 1981 Population Census. The enumeration of disabled persons was again taken up along with the Population Census of India conducted in 2001.

The Eleventh Plan document emphasizes and adopts a multi-pronged, cross-sectoral approach to identifying, preventing, managing, treating and rehabilitating persons with mental disabilities. There will be a focus on awareness drives, defining the various kinds of disabilities, generating valid census data, inclusion in all areas of development, and community based treatment and rehabilitation approaches. Efforts are to be directed towards strengthening and developing trained human resource to addressing the growing magnitude of mental disabilities. There will be emphasis on research to generate relevant data and culturally valid rehabilitative measures.

10. FAMILY MATTERS

No law or policy has a clear-cut statement that prohibits discrimination against persons with disabilities on matters relating to marriage, family, parenthood and relationships on an equal basis with others. Especially with regard to persons with psychiatric disabilities, the plethora of cases applying for divorce gets firm support from individual personal laws all which support that insanity can be a ground for divorce. However in particular cases, the Court exhibited sensitivity – for example in the *Anima Roy vs. Prabodh Mohan Roy*⁴⁵ the psychiatrist who

⁴⁵ AIR 1969 Cal 304

examined her recognized that she could have contracted the illness at any time in the course of two month or five years.

Perhaps standards of norms for investigation by psychiatrists could be reexamined.

As regards the right of persons with disabilities to retain their fertility and provide age-appropriate information, reproductive and family planning education, women with disabilities seem to be especially vulnerable to having their rights infringed. Women in institutions are subject to hysterectomies, as the 1984 case Hysterectomies of Mentally Challenged Women that was authorized by the government of Maharashtra demonstrates. Women with disabilities are perceived as children when parents come for treatment for the disability and are rarely seen in obstetric and gynaecological settings as adults. The reproductive health of women with disabilities in another grey area, which does not even find a mention in any programmes.

There is no mention of reproductive rights of men with disabilities in any planning documents.

Regarding rendering appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities, a programme to provide financial support to women with disabilities to hire services to look after their children is mooted. Such support will be limited to two children for a period not exceeding two years. The provision does not extend to men with disability and this is a serious lapse.

While there is no law that ensures the right of children, regardless of their disabilities or the disabilities of their parents to live with their own family, there have been extensive provisions for hostels for persons with disabilities, based on their disability. While on the one hand it might look as if it's a good scheme, on the other hand, it could result in further exclusion of persons with disabilities.

11. THE RIGHT TO HOUSING

One of the main prerequisites for Independence for persons with disabilities is an effective housing policy -- one that entails non-discriminatory public works programmes, non-discriminatory housing subsidies and non-discriminatory building codes. Non-discriminatory housing subsidies mean that programmes for public or social housing in the form of incentives in the form of subsidy and tax rebate to builders with the sole condition that the buildings conform to accessibility housing standards.

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act (1999) strives to enable persons with disabilities to live independently and be included in their communities. Provisions for achieving this goal are contained within the Persons with Disabilities Act,

1995, which states that Governments and local authorities should work to offer affirmative action schemes as well as ensure the accessibility of housing, public facilities, and transportation. Read together, these Acts provide a broad framework for protecting the rights of persons with disabilities to live independently. However, the situation on the ground shows that many of these goals have yet to be achieved, and indicates the need for policies containing more specific strategies aimed at ensuring that those with disabilities can live within their communities. Some progress has been made here -- examples being the launch of a pilot health care program for those with disabilities, or the city of Delhi's attempts to make public places accessible -- but there are many areas which still need vast improvement. In addition, this kind of legislation needs to include punitive measures when state or local governments do not adhere to its requirements -- for example, by funding the construction of public buildings that remain inaccessible to persons with disabilities.

The *Persons with Disabilities Act, 1995* does not specifically provide rights to basic services – adequate food, clothing, access to clean water and continuous improvement of living conditions. Provisions under Section 42 of the *Persons with Disabilities Act, 1995* calls for schemes to provide aids and appliances to persons with disabilities. Section 43 of the Act provides schemes for preferential allotment of land in favour of persons with disabilities at concessional rates for housing. The *Persons with Disabilities Act* has failed to ensure social protection and adequate standard of living to persons with disabilities. However provisions under the Eleventh Planning Commission document makes 'Provision of Public Housing Assistance to all shelter less poor families'; Social Insurance Schemes available to the unorganized sector are operated through the LIC such as Social Security Group Insurance Scheme covers all persons between 18 to 60 years belonging to the 24 approved occupation groups, and includes physically challenged. The National Handicapped Finance and Development Corporation (NHFD) is a major step to promote economic and development activities undertaken by persons with disability⁴⁶. There is need for adequate implementation and monitoring of these policies and more programmes that promote rights of persons with disabilities to lead a more dignified life.

12. POLITICAL AND CULTURAL RIGHTS

Though the appropriate policies are in place to ensure that persons with physical disabilities can participate in political life, the situation on the ground demonstrates that the difficulty lies in enforcement of these policies. While in 2005 the Election Commission directed the Chief Secretaries of all States/Union Territories to construct permanent ramps in each public building containing a polling station to ensure that persons with physical disabilities could exercise their right to vote, the Disabled Rights Group, along with other NGOs, alleged that these instructions had not been carried out in all areas. In contrast to even

⁴⁶ http://www.nhfdc.org/site/scas_schemes.aspx

the spirit of the efforts to ensure access to polling places for those with physical disabilities, however, are the policies in place in both the Constitution and the Representation of People Act (1950)⁴⁷, which can actively prohibit those with mental disabilities or mental illness from participating in political life by voting or standing for elections. Full equality will not be achieved until these policies are altered to avoid the disenfranchisement of large groups of voters with disabilities.

The National Policy for Persons with Disabilities does establish the need to "ensure equal opportunities for sports, recreation and cultural activities." However, while the Constitution of India recognizes the right of all groups to conserve their "distinct language, script, or culture" and the National Policy states that "special care will be taken to make Sign language [and] Alternative and Augmentative Communications . . . recognized, standardized and popularized," some groups have raised concerns about whether all disabled individuals, specifically those in India's blind and deaf communities, have easy access to educational materials and other communications in their language.

State policy (particularly in the form of the *Persons with Disabilities Act*, 1995, and the *National Policy for Persons with Disabilities*, 2006) is supportive of the need for individuals with disabilities to participate in sport, recreational and leisure activities, and includes provisions designed to both encourage development of special recreation centers and ensure accessibility to all public places. However, the situation on the ground remains mixed. Persons with physical disabilities are unable to enjoy leisure activities on an equal basis with others as long as transportation systems and public buildings continue to lack barrier-free access, a problem which has not been addressed on a consistent basis by the Government. However, organizations and establishments like the Wheelchair Sports Federation of India, the Indian Blind Sports Association, and the Special Olympics Bharat do provide opportunities for physically and mentally differently-abled athletes to participate in sporting activities. Unfortunately, there remains no institution available to coach elite differently-abled athletes in India, leaving a gap in attainment of the goals outlined in State policy. In order for persons with disabilities to be able to participate in leisure activities at the level described in government policies, stricter enforcement of these laws is needed.

13. RESEARCH AND DEVELOPMENT

While the laws and policies for promoting research and development, and availability and use of universally designed goods, services, equipments and facilities, and new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, are in place it is unfortunate that it does not provide accessible information to persons with disabilities about these technologies. The Eleventh Plan has drawn up a concerted and detailed plan to overcome the

⁴⁷http://www.prsindia.org/docs/bills/1179467379/bill105_20070926105_representatiin_of_people_act_1950.pdf

shortcoming. In addition the Persons with Disabilities Act, 1995 contains Guidelines and Space Standards for Barrier Free Built Environment for Disabled and Elderly Persons. Its scope and responsibilities are wide and covers, public places including transport facilities, academic institutions, and government and private offices.

Further the Eleventh Plan promises to promote greater accessibility and a barrier-free environment to persons with disabilities and that a new National Institute of Universal Design will be set up. All National Institutes would undertake activities of community outreach to meet the needs of the neglected and persons with disabilities in slums, tribal belts, semi-urban and rural areas. The Plans and policies does show sensitivity and will in enabling persons with disability a dignified life. But as of now, shadow reports, newspaper reports and practical observation tell tales of elusive aids, devices and assistive technologies and inaccessible spaces for persons with disabilities.

14. HEALTH

The *Persons with Disabilities Act* focuses merely on the prevention and detection of disabilities. The provisions entail that the appropriate government and authorities take steps for the prevention of occurrence of disabilities. The right to enjoyment of highest attainable standards of health should include accessible hospitals and primary health care centers in rural areas that are closer to the communities. There should be provisions of proper care and informed consent for treatment of persons with disabilities. In the state of Maharashtra "Hysterectomies of Mentally Challenged Women"⁴⁸ is a case in point. The public health system in general is on the verge of collapse in India. The situation of persons with disabilities with respect to health and habilitation is cause for grave concern.

15. THE RIGHT TO WORK

The right to work is not only guaranteed in Article 41 of the Constitution of India, but has also been declared by the Supreme Court to be included in the "right to life" provided by Article 21. In addition, the Persons with Disabilities Act outlines specific measures to be taken by the Government to better incorporate persons with disabilities in the workforce. These include the development of schemes providing for the training of persons with disabilities, the reservation of posts in Government establishments for members of community of persons with disabilities and the policy that employers must offer individuals who have acquired a disability a different job with equal benefits and pay.

In recent years, tangible steps have been taken by the government -- one example being the establishment of the National Handicapped Finance and

⁴⁸ <http://nhrc.nic.in/Publications/Womens.pdf>

Development Corporation -- to help provide employment opportunities and vocational trainings for those with disabilities. However, doubts have been raised by advocacy groups about the efficacy of some of these efforts, as well as the wage gap that often exists between able-bodied and persons with disabilities. This issue in particular came into focus with the recommendation of the National Human Rights Commission on the National Employment Guarantee Bill (2004)⁴⁹, which encouraged equal pay for those with disabilities despite lower production.

In general, the Indian courts have consistently insisted on enforcement of the provisions included in the Persons with Disabilities Act, thereby upholding a comprehensive "right to work." However, contradictions still exist between the respect for the right to work in the *Persons with Disabilities Act* and provisions in Indian labour laws. While the *Persons with Disabilities Act* protects the rights of those who have developed a disability to continue as an employee at the same establishment in a position of equal benefits and pay, thereby protecting their right to work, other labor laws (like the Industrial Disputes Act and Workmen's Compensation Act) at best approach the differently-abled from a charitable perspective by awarding compensation, and at worst provide for complete termination of service without any payment. Since provisions in these laws remain intact even after the passage of the Persons with Disabilities Act, 1995, the state of the right to work remains uncertain. However, Court judgments like *Shree Satish Prabhakar Padhye vs. Union of India and Ors*⁵⁰ have both maintained certain aspects of the right to employment (like the continuation of service even after the development of a disability) and confirmed their applicability to private establishments as well as the public sector.

16. CONCLUSION: INTERNATIONAL COMMITMENTS

India is a signatory to the Declaration on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region. India is also a signatory to the Biwako Millennium Framework for Action towards an inclusive, barrier free and rights based society. India was part of the negotiations on the UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities. The *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* was adopted to give effect to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific region. The *National Policy for Persons with Disabilities, 2006* was also adopted in furtherance of these international commitments, which are a two way process aimed at realizing economic, social and cultural rights for persons with disabilities. The government is in the process of evolving a framework for the implementation of the UN Disability Convention. The XI Plan document recognizes the need to integrate India's commitment towards the International Policy Framework consequent on ratification of the Disability Rights Convention on 01 October 2007. Since it is just a year since India ratified the UN Disability

⁴⁹ <http://loksabha.nic.in/ls/bills/nregbill.htm>

⁵⁰ 2006 (1) CLR 455

Rights Convention, the government is still in the process of designating a framework to promote its implementation. However, a significant step has been in the deliberations on this matter in the processes that put the 11th Five Year Plan in place. This will provide us with a policy framework for the next five years at the national level and will enable a convergence between different sectors that is so significant for the realization of disability rights.