

UN Convention: Rights of Persons with Disabilities in context Mental Illness in India

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The recent human right convention ensures the equal rights and opportunities among the disabled population with emphasis to vulnerable groups like women and children with disabilities to enjoy their inherent rights of life. It becomes mandatory to those countries signing the convention to reshape their policies, laws and administrative measures so as to secure and guarantee the rights of disabled population by abolishing existing wrong notions, custom and practices, and regulation that exaggerate the discrimination in their country. Current paper discusses the UN convention specifically in context with existing disability Act for the right of persons with mental disabilities. It emphasized the need, current status, its replicability, the gaps and future option to strengthen the policy aspect for the persons having mentally disability to enjoys equal rights.

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It is estimated that around 10 per cent of the world's population or 650 million people live with disabilities. The convention promotes and protects the human rights of persons with disabilities in civil, cultural, economic, political, and social life¹. However it is equally true that all over the world persons with disabilities faces gross human right violation by denying basic rights of equal participation, routine discrimination at all front of their life (legal capacity, freedom of expression, voting rights, etc) and many are found forced to be institutionalized there by making a direct breach of rights to freedom of movement and to live free in the community.

A study conducted by the Office of the High Commissioner for Human Rights in 2002' concluded that in practice persons with disabilities are effectively 'invisible' within the international human rights system (Degener and Quinn 2002). It has been highlighted that the legally binding of international human rights instruments does not address and has least impact on the human rights condition of persons with disabilities on social, political, economic and cultural circumstances in the county in which they live. In majority of the countries, there is rarely or least inter or intra monitoring system existing for checking human right violation. This is because due to lack of support for the application of the general human rights treaties to person with disabilities including legal protection, as only fewer than 45 countries have national protections for persons with disabilities. However, the United Nation has developed specialized instruments² for specific groups of population (women, children, refugees, and racial minorities etc) that ensure the rights of these groups suffering similar type of discrimination. As a result today, after many years of advocacy by various human right activist, lawyer, family members etc, the UN recently commenced a process to develop a convention on the rights of persons with disabilities and appeal to be adopted by every country in the world.

The proposed Convention was considered necessary as it has universal while other instruments (as stated above) have its limitations. It has also observed that the Declaration used pejorative language about disability such as the 1991 MI principles supposedly a human rights instrument, was questionable because it had been made without the active

¹ <http://un.org/disabilities/default.asp?id=109>

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- Universal Declaration of Human Rights (1948) (article 3, 21, 23, 25)
- International Covenant on Civil and Political Rights (1966) (article 26)
- International Covenant on Economic, Social and Cultural Rights (1966) (article 2) elaborated in 1994 (article 3,6,8,9-15)
- Declaration on the Rights of Mentally Retarded Persons (1971)
- Declaration on the Right of Disabled Persons (1975)
- Declaration on the Right of Deaf-Blind Persons (1979)
- Convention on the Elimination of Discrimination Against Women (1979) (article 3).
- International Year of Disabled Persons (1981)
- World Programme of Action Concerning Disabled Persons (1982)
- Convention (No. 159) concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983), ILO (article 2,4)
- Convention on The Rights of the Child (1989) (article 2, 6, 12, 23, 28)
- Principles for the Protection of Persons with Mental Illness and the improvement of Mental Health Care (1991)
- Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)
- Beijing Declaration on the Right of People with Disabilities (2000)
- Convention on the Rights of Persons with Disabilities (2007)

involvement of persons with disabilities and moreover the principles was more towards treatment only. Today disability thinking has progressed a lot in last two decade and thus there was a felt need for disability friendly concepts, norms and procedure. This was taken up by this convention to full fill the rights that specifically recognized the diversity of disability. The Convention was proposed “to ensure the full, effective and equal enjoyment of all human rights and fundamentals freedom by persons with disabilities³”.

About Convention: The UN contribution towards disabilities⁴ is a historic achievement with the introduction of its Convention for right of person with disability. On the eve of the 60th anniversary of the universal declaration of human rights, dignity and justice for all of us, become the theme of this year’s, as celebrated international Day for person with disabilities as well⁵. Further, the year 2008 is considered to be significant in the history international human rights movement, as on 3 May Convention on the Rights of Persons with Disabilities and its Optional protocol were enforced and legally binding instruments which set out the legal obligations of States to promote and protect the rights of persons with disabilities in their respective states.

The convention on the Rights of Persons with Disabilities⁶ is an international human rights convention which set out the fundamental human rights of people with disability. It is made up of two documents, the Convention on the Rights of Persons with Disabilities, which contains the substantive human rights provision, and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which are more limited documents that sets up an individual complaints procedure. This convention on the Rights of persons with Disabilities and its Optional Protocol was adopted on 13 December 2006 at the United Nations Headquarters in New York and was opened for signatories in history to a UN Convention on 30 March 2007. So far 120 countries have signed convention and 67 among these have also signed the Optional Protocol. Till date, including India 14 countries have rectified the convention and only seven countries have rectified optional protocol. The convention will come into power when 20 countries have rectified the same.

³ Source: <http://www.un.org/esa/socdev/enable/rights/ahc3eu.htm>

⁴ Based on the International Bill of Rights, the UN formulated the first specific document regarding disabilities in 1971 in the Declaration on the Rights of Mentally Retarded Persons. Important other documents followed but none of them are legally binding. The 1980s mark the main phase of activity regarding establishing international norms pertaining to persons with disabilities. In 1981, the General Assembly declared the first International Year of Disabled Persons. It was followed by the World Programme of Action Concerning Disabled Persons in 1982 and the Decade of Disabled Persons 1983-1992. Throughout the 1990s all UN conferences dealt with disability rights and addressed the need for protective instruments (World Conference on Human Rights 1993, Fourth World Conference on Women 1995, Habitat II 1996). At present, the Ad Hoc Committee on Disabilities is involved in a process to create a convention that protects disabled persons on an international level. A high level of awareness is also demonstrated by the European Union, the year 2003 was declared as the European Year of People with Disabilities. Other important regional observances include the Asian and Pacific Decade of Disabled Persons (1993-2002), the African Decade of Disabled People (2000-2009), and the Arab Decade of Disabled Persons (2003-2012). Source: http://www.hrea.org/index.php?base_id=152

⁵ Source: <http://www.un.org/disabilities/default.asp?navid=22&pid=109>

⁶ The Convention notes that disability is an evolving concept and results from the interaction between a person’s impairment and obstacles such as physical barriers and prevailing attitudes that prevent their participation in society. The more obstacles there are the more disabled a person becomes. Persons with disabilities have long-term physical, mental, intellectual, or sensory impairments such as blindness, deafness, impaired mobility, and developmental impairments. Some people may have more than one form of disability and many, if not most people, will acquire a disability at some time in their life due to physical injury, disease or aging. Source: <http://www.un.org/disabilities/default.asp?navid=24&pid=151>

The countries having signed the convention are legally binding international instruments which clarify States parties' obligations to respect and ensure the equal enjoyment of all human rights by all persons with disabilities⁷. This is the first of its kind comprehensive human rights convention in 21 century, to be open for signature by regional integration organizations. This convention had marked a remarkable paradigm shift in the approach and attitudes towards person with disability. Now it view person with disability as “subject” (with rights who are capable to execute and claim those rights to which they are entitled and can take decision for their lives based on their free and informed consent, as an active member of society) rather treating them as “object” of charity, medical treatment and social protection. Since India has also signed this Convention and signaled to rectify it soon, it becomes apparent that she is forced to have radical reforms in the existing disabilities laws.

Among all disabilities, mental illness (MI) is largely prone to human right exploitation not only in India but the status remains same around the world. The current efforts are to high light the issues concern to existing mental disability in our country in context to UN Convention on disability. This is because it is largely neglected, as it is the only invisible disability that is least integrated with the available provisions made in the disability law existing in our country. The paper specially emphasis the subject matter of this convention with mental disability only and relates with the existing law such as Mental Health Act of 1987, PWD Act, 1995, RCI Act of 1986, and National Policies with person with disabilities, with special focus on vulnerable groups such Women, Children and Geriatric. It also emphasizes the rectification to be made at country level for programme and policies in context to Convention on the Rights of Persons with Disabilities, and also for the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Existing Law: Under Indian Municipal Law ‘person with disability’ means – “a person suffering from more than 40 per cent of any disability by reason of blindness, low vision, leprosy cured, hearing impairment, locomotors disability, mental retardation and mental illness; as certified by a medical authority. The constitution of India is based on right to ‘equality before the law’ and equal protection of law; and prohibits the State from discrimination on the ground of religion, caste, race, and place of birth. Any provision of constitution is not prohibiting the State to make a law, for the benefits of ‘person with disability. On the other hand, it may be interpreted that, impliedly States are empowered to make the law for benefits of ‘person with disability’, which will not violates the rights to equality.

Article 21A of the constitution is grating compulsory and free fundamental right to education to the children between the age group of six to fourteen years. Article 41 of the constitution is expressly providing that State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want⁸.

⁷ Source: <http://www.un.org/disabilities/default.asp?id=448>

⁸ Source: http://india.gov.in/knowindia/directive_principle_state_policy.php

The entry No. 9 of List II (State list) of the seventh Schedule of the constitution empowers the state government to make the laws for “Relief of the disabled and unemployable”. Further, the Supreme Court held that “right to life” under Article 21, includes right to social security, i.e., security against sickness and disablement. The “right to life” has wider meaning including right to livelihood, right to health and medical care, better standard of living, hygienic conditions in the work place and leisure to make the life meaningful and purposeful with dignity of person⁹.

From the Act for regulating ‘MAD’ house in 1774 to Lunatic Act from 1845 to 1912¹⁰, the history of mental health legislations in India clearly demonstrates that though the need has long been recognized, legislative attempts to address it have been not satisfactory. Thereafter series of disability law came into existence viz., The ‘Mental Health Act’¹¹ in 1987, the Rehabilitation Council of India (RCI)¹² in 1986, Disabilities Act¹³ (Equal Opportunities, Protection of Rights and Full Participation) of 1995 and recent (2006) addition of National Policy for persons with disability. Though National Trust¹⁴ of 1999 is meant for disable persons but it does not include welfare of person suffering from mental illness i.e. it does not recognized mental illness as disability.

However, in today’s context, these Acts are also a big disappointment for persons with mental disabilities. Not only does it meet out step-motherly treatment, it fails to break free from the age-old definition of mental disabilities that use terms such as unsoundness of ‘mind’ and ‘lunacy’. The absence of category for learning disabilities has led to a situation where persons with such disabilities are being added to the category of mental disabilities.

Pitfalls in Existing Disability Law: In India, the PWD act recognized seven disabilities and mental illness is one of them. However there is total confusion over the subject matter and largely misunderstood as mentally retarded by majority of the policy makers. This suggests that the recognition not intended but included by default. The Mental Health Act comes under Ministry of Health and Family Welfare (MOHFW) and is more inclined towards the right of treatment that is largely confined to institutions. While the PWD Act covers both benefits as well rights of disabled persons that are covers Prevention, Rehabilitation and Integration back into the family¹⁵. The rehabilitation largely falls under Ministry of Social Justice and empowerment (MOSJE), and treatment without rehabilitation services is not complete cycle. Despite of this fact, the coordination between the two ministries is at low ebb and hence the MI sufferers from not only treatment and rehabilitation services but also in

⁹ LIC of India v. Consumer Education and Research Centre, AIR 1995 SC 1811

¹⁰ Note: Lunatic Asylum were renamed mental hospital in 1920.

¹¹ **The Mental Health Act, 1987**, to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected there with or incidental thereto.

¹² **RCI** to standardize training course for professionals dealing with people with disabilities, to prescribe minimum standard of education and training of various categories of professionals dealing with people with disabilities, to regulate the standard in all training institutions uniformly throughout the country, to promote research in rehabilitation and special education and to maintain Central Rehabilitation Register for registration of professionals

¹³ **Objective of PWD Act, 1995:** Promoting and ensuring equality and full participation of persons with disabilities and protecting and promoting their economic and social rights

¹⁴ **National Trust Act:** This basically meant for doing welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, supports programmes which promote independence, facilitate guardianship where necessary and address the concern of those special persons who do not have family support.

¹⁵ Source: <http://rajrojar.nic.in/pwdact1.htm>

the allocation and mobilization resources¹⁶. As a result, about nine crores parents of mentally ill person are being neglected and these figures are on increasing trends due to unemployment and other factors.

This is much evident if we look Section 33 of the Persons with Disabilities Act, 1995 provides which narrates that every appropriate Government shall keep in every establishment such percentage of vacancies not less than three percent for persons or class of persons with disability of which one percent each shall be reserved for person suffering from, Blindness (or low vision); Hearing impairment, Locomotors disability (cerebral palsy). The recent amendment to the Act in the act further expanded this to 5% with the additional 2% for MR, cerebral palsy and autism (Mohit and Bandhu 2006), thereby making no reservation for MI set out to total discrimination for mental health sector (Against the Article 27 of Convention). Thus person with psychosocial problems features low in hierarchy suggest clear discrimination of person suffering mental illness for their right of employment. Thus the Act needs revision such that the provisions are made to reserve vacancies for persons suffering from mental illness excluding those with extreme severity.

As regards care, the law is silent towards the aftercare management of vulnerable groups (Women, Children and too some extent Geriatric) is the major concern for the parents after they are no more. In India there is only countable rehabilitation¹⁷ centers exist for person suffering from MI, which largely are confined to the southern part of the country (Sinha, 2008) and is only accessible to certain groups of people who can afford the services. The public rehabilitation centers for the person suffering mental illness is negligible and those exist are in deplorable conditions against the large demand for rehabilitation services. Absence of rehabilitation framework is also one of the major issues that restrict the scientific way of imparting the rehabilitation services. The Mental Health Act of 1987 largely focuses the psychiatric rehabilitation¹⁸ only, as there is no provision of psychosocial rehabilitation¹⁹. This is because it is largely managed by professionals and the voice of non professionals is

¹⁶ The Supreme Court has fined all banks, Rs. 50 lakhs for overcharging those who took loans and by rounding off amount had overcharged approximately 3600 crores over a period of years. The decision was given two years back. The money has to be used for the welfare of the disabled. Our government very promptly filed an affidavit stating that there is well managed National Trust for the disabled and the money will routed through the National Trust. This means that when this order is implemented, the mentally ill will not receive any money as the National Trust Act does not include Mental illness as one of the disabilities. Sources:

¹⁷ **Rehabilitation:** Tertiary prevention involves measures aimed at disabled individuals restoring their previous situation or maximum the use of their remaining capacities. It comprises both interventions at the level of the individual and modification of the environment (Adopted from WHO Report , 2001)

¹⁸ It is defined as a set of targeted interventions that is intended to prevent further, or reduce disability that is associated with mental health problems (Barton, 1999) or it is to teach skills and provide community support so that individuals with mental disabilities can function in social, vocational, educational and families roles with the least amount of supervision from helping professionals. (Adopted from Kaplam and Sadocks, 1999). Psychiatric rehabilitation assumes that disabled persons need maintenance medication, social and independent living skills, and environmental resource and support to fulfill the role demands of community life. One has to keep track o stage of the disorder, ranging from prodromal, to acute, to reduce phase; that contains treatment and rehabilitation modalities, such as a drug therapy, family and cognitive therapies, social skills training and vocational rehabilitation.

¹⁹ It is the process that facilitates the opportunity for individuals – who are impaired, disabled or handicapped by mental disorders – to reach their optimal level of independent functioning in the community (WHO 1996). It aims to help in reducing the disabling effects of chronic mental illness and to highlight social and environmental barriers, which hinders treatment and rehabilitation efforts and which add to the stigma or chronic mental illness. In addition to this it also includes consumer empowerment and involvement with planning, delivery and evaluation of mental health services. Overall the concept of psychosocial rehabilitation is focused to increase the ability of individual for independent functioning and making competitive enough to lead best possible quality of life by changing the surrounding environmental of an individual experiencing any mental disorders. The term psychosocial rehabilitation and support is used herein to refer to a range of social, educational, occupational, behaviour and cognitive intervention designed to increase the individual's basic psychosocial capacities for role performance and manifestation of his or her potential (Adopted from PSR, 2000)

least concerned or preferred for the integration of the concept of psychosocial parameter in the ongoing rehabilitation programme.

Global experience of pharmaceutical industries and psychiatric profession in several countries shows remarkable improvement with psychiatric medicines being very effective that resulted in paradigm shift from treatment to rehabilitation services. However in the matter of rights of MI persons, they lacked behind because lack of user perspective. However, this was not true as many caregivers and patients have made innumerable representations through family organization like, National Association for Mental Illness (NAMI); Association for Mentally Disabled (AMEND) and National Organization - National Human Rights Commission (NHRC) Human Right Law Network (HRLN) fighting for the justice of disable and self help groups like Friends of NIMHANS in Bangalore, AASHA in Chennai, BAPU Trust in Pune, AWAG in Ahmedabad, Friends of Vardaan in Baroda and many more.

Today by and large activist and other non professionals, NGOs²⁰ associated with Mental health sectors feels that Mental Health Act of 1987 has many lacuna in the matter of voluntary admission and discharge, appointing guardian, etc that suggest that it is very custodial law which restrict the freedom of mentally ill patients to large extent denial informed choice. On the other side NGOs working in full time residential rehabilitation programme are forced to go to higher court escorting with police for taking the custody of mentally ill person at their centre. Overall it seems that the Act is merely an extension of the Indian Lunacy Act. It is very custodial law denying freedom of choice to the mentally disabled.

From the families' point of view guardianship is not a human rights issue. It is an emotional concern about quality, content and agent of care when they are no more. However the process of appointment of guardians of persons with MI is unfair and not truly justified. The clash of perspective between Law and Society reality is even more evident in the matter of guardianship rights. Sections 52, 53 and 54 empower the District Court as the sole authority to identify a guardian for taking care of the person and the Court of wards or a manager to take care of his property. Section 50 of the Mental Health Act recognizes the right of natural guardians to apply for judicial Inquisition but not identify a legal guardian of their choice worse still, once this legal mechanism is set in motion, the natural guardian and mentally affected person surrender their rights completely. The latter is divested of his or her property and the family has no say either in the choice of the guardian (for care of the person) and the manager (for care of the property).

The court can appoint a voluntary guardian for a patient who is abandoned by the family, but the procedures are so complicated that is almost impossible to get a guardian appointed (Srinivasan, 2006). Similarly, to acquire family pension for the person suffering MI, is so difficult and complicated that the parent let go the benefits due rampant corruption involved. Here the question arises that why the rules applicable for cannot mentally retarded of other

²⁰ Paripurnata; Anjali; Banyan; Vardaan, Sarthak, AMEND, ACMI, Ashadeep, etc

disabled to be made applicable for the MI? Another major lacuna observed is related with availing the railway concession. The railway had provided a provision of concession of 75% for a person with MI and the escorts who accompany them. However practically it was found that the form is available only for person suffering mental retardation. Why such differentiation and variation is observed among the different types of disabilities?

Context to Convention: The discussion raised in this paper is to relate the mental illness in the purview of the subject matter of this convention. It would be very difficult to relate and elaborate all 50 articles. However some of the major points are covered in the view of convention - in context to mental illness.

Burden of MI: As per 1991 National Sample Survey it is enumerated that population of disabled people in India is 1.9%. This low figure raised perpetuated wrong notion that people in India are least affected with disability which went against owing to the census figures of 2001. The total disabled persons reported during 2001 census are around 21,906,769 of which 49 per cent were visually disabled, 7 per cent had speech deficiency, 6 per cent had hearing, 28 per cent had locomotors deficiency and only 10 percent had mental disorders. Comparing proportion of disability among the countries, in 2002, the percentage of disable persons in India is approximately 6 per cent; whereas in America, it is 9 per cent, United Kingdom 14.2 per cent and in Australia it is 18 per cent – much higher than India. Reasons for high percentage in developed countries were the expended definition of the word ‘person with disability and research methodology. In these developed countries, internal disabilities of the person are also covered within the definition of ‘person with disability’. Whereas in India, it seems that the burdens of mental disorder are low however, the stigma as well as ignorance among the general population has perpetuated this underreported figures of disability with mental disorders. This is because lack of standardization of methodologies in research and no national survey has been done specifically identifying estimates of morbidity and mortality of CMD and SMD as observed in other Family Health Programme. Thus there are a large number of hidden cases which have been not accounted in mental disabilities. This is gross violation of Article 8, where awareness raising is largely restricted to visible deformities only.

Availability and Accessibility Services: Today the estimated load²¹ of major mental disorders are around 10 million and the minor mental disorders are five times more when compared to major mental disorders. There is a wide diversity of available resources and manpower²² in the mental health sector (Goel et al, 2004) having only 45 public mental health hospitals largely in poor, deplorable inhuman conditions that are aggravating to human right violations (NHRC, 1999). These facts highlight not only major deficiencies, but also irregularities in planning and management of the resources. The enormous asymmetry between various

²¹ Case-load in respect of major mental disorders has been calculated at the rate of 1% of the population and that of minor mental disorders at the rate of 5% of population.

²² While the exact requirements of mental health personnel have not been definitively prescribed, the ideal required number of mental health professionals has been calculated as Psychiatrists 1.0 per 100,000 population, Clinical Psychologist: 1.5 per 100,000 population, Psychiatric Social workers: 2.0 per 100,000 population and Psychiatric nurses: 1.0 per 10 psychiatric beds. Source: Goel, D.S. et al, (2004), Mental Health 2003: The Indian Scene, ed: S.P. Agarwal, Mental Health: an Indian Perspective, 1946-2003, Ministry of Health and Services, MOHFW, New Delhi, Elsevier publication, Pp.3-24

aspects of the mental health care delivery system among various geographical regions²³ in diversified groups of population in India illustrates the need for serious introspection and radical reordering of priorities (Against the Article 25 of Convention).

Further, looking at rehabilitation services in the mental health sector, the missing data estimates do not portray the ground realities of the rehabilitation services in the mental health programme in India and also for the world. Data pertaining to right to rehabilitation at various levels (global, national, regional and local) are only estimates and there are no exact data. The people suffering mentally illness are neglected from constitutional, social, and economic rights in the society because lack of community support systems. Without the network of community-based services and support systems, however, it is difficult to integrate people from these wards into the community.

As a result many of them get relapsed repeatedly and are forced to return again and again to hospitals. Inside or outside institutions, often awaiting placement in social care institutions, people spend their lives in frustration. Most people never obtain assistance to learn the vocational or survival skills needed to lead an independent life. This is not only a waste of their human potential; it is a wasteful and inefficient use of hospital beds and mental health resources system. The issue of accessibility is the guiding principle and it is specifically addressed by Article 9 of the convention where it defines the accessibility in comprehensive manner. Taking this broader meaning of accessibility, one realizes that many of these facilities are not accessible to persons with mental disabilities.

Women with MI: Women's mental health is increasingly recognized as a major public health concern, with a critical impact on the well being of individual, families and society. Thus Women health largely depended upon multiple factor and women's mental health is no longer an exceptional as she also acquires the similar status. Good mental health is intrinsically important, conferring a subjective sense of emotional well-being on the individual woman and extrinsically important, representing a significant resource to the broader society in which she lives and works²⁴. There are several studies pointing out the presence of common and severe mental disorders under various settings; however here are countable legal cases of human rights violation. Both community-based studies and studies of treatment seekers indicate that women are, on average, two to three times at greater risk affected by CMD. Similarly, in the case SMD men and women are equally affected by schizophrenia, there have been some differences in their manifestation, course and outcome. Women have also been an insidious onset with passivity and social withdrawal (Thar and Patel, 2004)

Law is same for both men and women; however, in implementation, law affects men and women differently; for example, women are not admitted /discharged /properly treated (self care; and hygienic living conditions) in the institutions compared to men. Divorce on ground

²³ The Court's order of 2002 to have at least one mental hospital like the Institute for Mental Health and Neurosciences (NIMHANS) in every state capital is yet to be implemented. "Take the north east. There is only one hospital in Tezpur, Assam, for all the seven states and I don't see the situation improving," says Mukul Goswami, the founder of Ashadeep, a Guwahati based non-governmental organization that takes care of the mentally ill.
Source: www.disabilityindia.org/forum/view_message.cfm?Forum=14&Topic=89

²⁴ Source: http://www.searo.who.int/en/Section1243/Section1310/Section1343/Section1344/Section1353_5282.htm

of mentally illness has been disproportionately used against women. Women, more specially wives, have been victims of violent crimes committed in a state of insanity and within the institution (shelter homes, jails, mental hospital etc) have been largely sexually exploited. Besides, owing to mental unsoundness, divorce and debar from marriage have become the common phenomenon. As a result, women are largely denied to adopt or take custody of their children. This practice is more prevalent in rural areas compared to urban place. Thus today, it is quite evident that social cultural factors and unequal power relations critically promote and impended human right violation for women suffering from mental illness. Article 6, 10, 12 to 16 of Convention clearly demands clear welfare polices related to rehabilitation or any service providing guidelines to mentally ill women and avert the social stigma that further compound the problem of violation of human rights among women suffering from mental illness.

Children with MI: The theme for the observation of Mental Health Day for 2003 is “Emotional and Behavioural Disorders of Children and Adolescents’, for generating global awareness. The evidence compiled by the World Health Organization (2001) indicates that by the year 2020 children will grow with psychiatric disorders. Mental health of children and adolescents has thus emerged as an issue of major international public health interest. Like adults, children and adolescents are also victims of mental disorders; they interfere with a way they feel and act. Usually parents and teachers and other adults in ignorance often neglect behavioural indications and as a result, when untreated, mental health disorders can lead to school failure, family conflicts, drug abuse, violence and even suicide²⁵.

In spite of knowing that the child has certain needs which are common to adults (such as nutrition, clothing, health, shelter, etc) in India, research in child psychiatry so far is confined to only clinical aspects only. Though, India has given much attention and weightage to mental health needs by time to time by promoting general health and education policies such as the National Policy for Children (1974), National Policy on Education (1986), and National Policy for Mental Handicapped (1988). The integrated Child Development Scheme (1989) (ICDS) laid the foundation for proper psychological, physical and social development of the child to reduce the incidence of school dropouts, mortality, morbidity and malnutrition²⁶. Owing to Article 7 of the convention, It clear indication that despite of such efforts Child Mental Health Problems remained neglected and are found inadequate in dealing by and large throughout the country.

Right of Information: The right of information relates Article 31 of the Convention regarding the data collection of services imparted and resource mobilization. However the National Policies with person with disabilities documents from Ministry of Social Justice and Empowerment (MOSJE) clearly states their achievement by projecting joint figures of all disabilities. The documents does not classify the achievements of resource mobilization according to seven disabilities categorically either by age or sex. (How many women suffering from MI had been given justice? How many children suffering from MI had been mainstreamed in the school? Among all disabilities, how much resources have been used to

²⁵ Source: <http://mentalhealth.samhsa.gov/topics/explore/children>

²⁶ Source: http://www.jjacam.org/0104/Jiacam05_4_1.pdf

for MI rehabilitation services? How many people with MI have acquired disability certificates?) This is because there are not clear cut policies for allocating the funds equally among all seven disabilities and also lack of understanding on their part. The mental disability is always misunderstood and miss-interpreted by MOSJE (Against the Article 26 of Convention). However this is not true for Ministry of Health and Family planning as they maintained the records of morbidity and mortality of mental illness, as their service institutions in better way.

Missing Links and Crucial Controversies: Though it is said that the Convention is fully drafted keeping all aspect of recent concept of disability in context to human rights. However there are missing links and controversies related to convention as discussed below

Geriatric, the vulnerable groups: Though the article 6 and 7 includes the women and children as vulnerable groups to disability. However it ignored the ever demanding geriatric group. The importance Geriatric as vulnerable group in general (including suffering MI) was discussed in 1982 by the World Assembly on Ageing adopted the Vienna International Plan of Action on Ageing. This document considered to be useful guide to look after and safeguard the rights of older person as it contains 62 recommendations that are largely in context to the rights proclaimed by the International Covenants on Human Rights²⁷. It is projected that by the 2020, there will be 470 million people aged 65 and more in developing countries, more than double the number in developed countries²⁸.

An elderly person in India suffers from the dual medical problems of both communicable as well as degenerative disease (Dementia, Alzheimer etc). Mental disorders in elders in India are a major public health issue for four reasons. First due to demographic ageing, second the population of elders and therefore, the numbers with mental disorders, third, traditional family and social support systems for elders are rapidly changing and fourth there are virtually no health services geared for the special needs in India (Varghese and Patel, 2004).

Role of Families: Though the Convention relates to recognizing the participation and representational rights of persons with disabilities. However it did not throw much light on the person suffering with multiple disabilities and also unsoundness of mind and this is where appropriate role of family member or family organization is required. It is clearly mentioned in the Disability Caucus that the participation should be of person with disabilities and their representative organization²⁹. Such a formulation is very well required and should be recognized when person suffering disability is unable to advocate himself and there where it allows for families and family organization to be consulted in case of multiple disabilities and unsoundness of mind for MI.

Reasonable Accommodation: Here it means that a person with disability or disabilities should have right to exercise the same rights and freedom as others on an equal basis with others, in a way or as per requirement adjustment and modifications to the environment

²⁷ Source: http://www.escri-net.org/resources_more/resources_more_show.htm?doc_id=425221

²⁸ Source: <http://www.india-seminar.com/2000/488/488%20joshi%20,%20sengupta.htm>

²⁹ Source: http://www.camhindia.org/un_disability_convention_2005.html

should be made³⁰ seeing the severity of disability. It highlights the long – held right for living with dignity in an inclusive and accessible community – accommodation must be enabled through the lifespan approach such that it is not disproportionate and unlimited, otherwise it will be meaningless.

Explicit and Implicit Rights: Taking account of the Convention for person with disabilities, it is agreed that civil-political rights were immediately realizable whilst socio-economic rights are resource driven and largely implemented on the availability of the resources and thus the reasons for the delayed implementation of these rights. India being the country of full of resources (Is not poor but poorly managed resources) usually argue that present negotiations relates to the inclusion of an explicit provisions, which states that those social economic rights which do not requires resources shall immediately implemented. However the question being asked why - which is implicit cannot be made explicit? If it so happen that were done for person with disabilities would be provided rights not available to other in the population, the chance of conflict is more.

The Dilemma: With the Convention on right of disability was signed by the countries including India, there are discussion on duplication and new inclusion in this Convention. Since this Convention largely proposed to ensure the full, effective and equal enjoyment of all human rights and fundamentals freedom by persons with disabilities³¹, cussing the civil, economical, social and political rights among women and children for treatment and rehabilitation as well as for monitoring etc, one questions which keeps resurfacing is what should find inclusion in the Convention? The policy makers in India, point out that, the Convention of person with disability, is just a duplication of such like rights that already exist in constitutions of India as Fundamental rights and if these existing rights are extended to persons with disabilities, the utility of such convention becomes meaningless. However the rights mentioned in the convention are still pending for discussion as if these rights were in fact accessible to persons with disability, there is no point to deliberate on this convention. Besides, the controversy remains for making provision of grating the same or more to person with disabilities. It should be noted that the primary rights (civil and political) require inclusion convention because they need to be tailored to the specific concerns of persons with disabilities.

Not Signing Optional Protocol: Though India has signed one document of Convention along with 120 countries, the other Optional Protocol of the Convention was discarded because of two reasons. One if at all it is signed than domestic situation of the disabled would become the responsibility of the international community if the rights of disabled persons as noted in the Convention are not fully exercised in the country. While the other view point has mixed response that is that there is no need for signing optional protocol as Government is capable to monitoring the response to the grievances internally. However the country should be forced to sign the optional Protocol to get justice and avert human right violation looking the situation of person suffering from mental illness in our country.

³⁰ “What is the new Convention and what does it means for me? A new Convention – A new Approach Sources: <http://www.icrpd.net/implementation/en/toolkit/section2.htm>

³¹ Source: <http://www.un.org/esa/socdev/enable/rights/ahcstata1fscomments.htm>

National Implementation and Monitoring: Article 33 of the convention on person with disability should be implemented with coordination mechanism. Taking account of MI, there at least eleven ministries directly connected with the implementations of the convention and only two monitoring agencies (State and Central Mental Health Authorities) to monitor the activities related to treatment and rehabilitation. Besides, these monitoring agencies are largely occupied the professionals (Psychiatrists and Psychologists) thereby given less or no importance to other concerned groups (Family members, Lawyers, Social worker, administration, etc) as most of these view MI as medical model rather socio-economic model. In developing and monitoring, they should adopt the similar strategy as adopted by Vardaan Foundation for MOHFW (Sinha, 2008) for developing guidelines for promotion of Human rights Issues for Mentally ill Persons.

Conclusion: Since India has signed the convention, it becomes apparent that she needs to undergo dramatic change in the exiting disabilities laws (Acts) such that gross human right violation occurring with person with disabilities (specially with MI) is averted and brought to the justice as desired by the Convention in all aspects. Beside other measures includes easy availability and accessibility of the desired services making the service more democratic rather adopting top down approach. It is also equally important that once the Convention is legally recognized in the country, it becomes essential to establish monitoring and grievance mechanism. While adopting new policies and programmes, the State will have legal binding to ensure safe and correct procedure are adopted and implemented in the large interest for the rights of persons with disabilities. Since the government had already started to work in this regards (Sinha, 2008), it hoped that the lacuna in the disability law as discussed above will be modified with the principle and subject matter as mentioned in the Convention of right of persons with disability. Such initiatives will help to achieve the strengthen the themes, objectives and forthcoming goal of this Convention that would change the wrong or vague notion of the public towards persons with suffering disabilities which will latter has ultimate impact on the society as a whole.

However in doing this, a coordination mechanism will be required as disability is concern not only MOHFW or MOSJE but also to other ministries which relates the functions as mentioned in all 50 articles of UN convention for person with disability. Besides, all disabilities have to be equally treated in providing the desired services and allocating the resources, whereby common concern can override the variant perspective to arrive at a mutual understanding. This is only possible if a dialogue between various players, abjuring adversarial postures take place in environment respecting the legalities and functional responsibilities interlinked with each others. A radical changes / amendments are also necessary in the existing disability laws of our country such that all Mental illness is treated equally with other disabilities by sensitizing the all concerned department (Police. School, Judiciary, etc) fall under the purview of the subject matter of Convention. This international Convention in contrast to a domestic law and policy is aimed to be foresighted to be futuristic in its purport. Thus such radical reforms should be providing direction setting principles that are compatible with the ethos and culture of our country.

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