

## Protection of the Rights of the People with Disabilities in Sri Lanka Need for New Legislation

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**Abstract**— *The right of every person to be treated with equality and human dignity is globally accepted. However, this common acceptance has not been able to sufficiently protect vulnerable groups, who need special care and attention to stand up independently within society. Among them, as a world largest minority, disabled persons are significant. Therefore, to ensure their wellbeing and social security, in 2006, United Nation’s convention on rights of the peoples with disabilities (UNCRPD) was formed. Accordingly, persons with all types of disabilities have a right to enjoy all human rights and fundamental freedom without any discrimination. The convention specifically identifies the right to accessibility, medical treatment, rehabilitation and personal mobility as rights specific to develop their wellbeing and inherent dignity. Therefore, after its adoption, nearly 160 countries and regional organizations have ratified the convention and its optional protocol. Article 12 of the constitution of the Democratic socialist republic of Sri Lanka guarantees the right to equality and non discrimination as fundamental rights. Further, under Protection of the Rights of the People with Disability Act, National Council for persons with disability has formed as administrative body to protect rights of disabled People. Though there is an effective mechanism, Sri Lanka has been unable to comply its law system with aforementioned conventional provisions. Therefore it is timely to make necessary legislative enactments to provide adequate safeguard for the said community. Whether existing Sri Lankan legal framework is adequate to protect rights of the People with disabilities, or should there be new legislation to implement the rights expressed in disability rights convention is the main research problem. An objective is to identify the pros and cons of existing Sri Lankan disability rights legal framework, and submit suitable recommendations to form more disable friendly legislative enactment. Therefore, the area of study will be limited to existing Sri Lankan disability rights jurisprudence, and relevant foreign and international legal instruments. Primary data is collected qualitatively by interviewing disability rights activists and legal professionals. Secondary data will be from books, journal articles and internet articles. It is expected that the research will be an effective platform to*

*protect rights of people with disabilities, under Sri Lankan human rights legal regime.*

**Keywords**— *International Disability rights, Persons with disabilities in Sri Lanka, New Legislation*

### I. INTRODUCTION

Few decades before, the global community considered the concept of disability as a Para natural phenomenon ( Karlan & Rutherglen 1996). Therefore, in most instances, people with disabilities were understood as a separate community and excluded from the society. 1 Article 2 (equality close) of the Universal Declaration of Human Rights (U D H R) also states, “all human beings are born free and equal in dignity and rights” and are “entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. After its adoption, while including aforementioned praise into the 7 united nation core human rights treaties, the global community had shown their lack of understanding regarding the necessity of special legal protection for people with disabilities (Stein 2007). Though there is a practical constrains, there is no argument about the theoretical application of the above declaration or conventions subject to the disabled people. However, as a result of this implicit recognition, in the last 6 decades, those disabled people were unable to expressly bring their claim into legally enforceable human rights mechanism.

Today, it is estimated that over 600 million people or more than 10% of the global population are suffering with some form of disability. Out of them, nearly 400 million are living in developing countries (Kanter 2003). Therefore, since the last 3 decades, through multiple regional and international programmes, the international community has taken various positive steps to identify the specific problems and find necessary solutions to improve their living standards.

In the above context, the United Nation’s Decade for Disabled Persons (year 1983 to 1992 time period) is

mostly significant. In that duration, UN human rights commission had appointed Leandro Despouy and Erica-Irene Daes as special reporters to examine the worldwide pattern of abuse against people with disabilities. Their reports found that individuals with disabilities experience discrimination in voting, employment, housing, health services, public accommodations, education, transportation, communication, recreation, and opportunities for political participation on every continent (Despouy 1991). As a solution to the said problem, disability rights scholars have emphasized the necessity of binding disability rights instrument with treaty based rights enforcing mechanism (Kanter 2003). As a result of this discussion, the pioneer ship of the Organization of American States (OAS) was established in 1999.

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities was formed as a first intergovernmental instrument as a solution for the aforementioned issue. After a short period of 4 years, in 2003, the Parliamentary Assembly of the Council of Europe delivered its recommendation 1592(2003), entitled "towards full social inclusion of persons with disabilities". Under this recommendation, the Europa parliament emphasized its members to certify the effective and meaningful enjoyment of right to education, right to work and right to private and family life etc, for the disabled peoples within their territories.

Parallel to the adaptation of 2 aforementioned instruments, UN and other regional organizations have initiated a number of agreements, statements, world conferences,

And other meetings focused on the well been of the disabled people (Rioux and Karbert, 2003). Meanwhile, up to 2002, there were 39 countries have instituted non discrimination and equal opportunity legislation relevant to the field of disability rights protection (Quinn & DeGener, 2002). In this context, the said global forum set the ideal platform to hold final discussions to establish a universal framework to address the disability related issues. In 2006, United Nation's Convention on the Right's of the Persons with Disabilities (UNCRPD) was formed as a major framework on the global disability rights arena.

#### *The UNCRPD convention and its optional protocol*

After its adaptation on 13<sup>th</sup> December 2006, over 160 countries and regional organizations have ratified the convention through the enabling legislation. Furthermore, during the last 8 years, the global community uses disability rights as a yardstick to measure the human rights context of an individual

nation. Under these circumstances, it is necessary to examine the effectiveness of the UNCRPD convention in the global disability rights perspective.

The CRPD's 25 preamble paragraphs and 50 articles provide a framework within which disability rights may be addressed in the global context. The aim of the drafts was not to create 'new' or special rights for persons with disabilities, but instead to articulate how existing human rights obligations apply specifically to disabled persons (Lord and Stein, 2013).

In the preamble to the convention, drafters mainly emphasize the right to inherent dignity, right to equality and non-discrimination, right to full and effective participation etc as the basic human rights which have to be assured by the state parties, in the context of policy implementation (paragraph A B and C). Further, most importantly, the preamble identifies the concept of disability as an evolving concept and requests all parties to remove all the social attitudinal and environmental barriers, which hinder the full and effective enjoyment of their rights and fundamental freedom (paragraph E).

To ensure the meaningful implementation of the above paragraphs, the convention emphasized that state parties must

(A) Adopt legislative, administrative and other measures to implement enumerated rights;

(B) Abolish or amend existing laws, regulations, customs and practices that discriminate against persons with disabilities; and

(C) Adopt an inclusive approach to protect and promote the rights of persons with disabilities in all policies and programmes as the general obligations (C R P D article 4). Further, the convention identifies the public awareness and equal accessibility to physical environment, transportation, and communication as the necessary elements to realize the equal treatment for the people with disabilities (C R P D article 8 and 9).

However, for economic social and cultural rights, these obligations only extend to the maximum level of available resources (Lord and Stein, 2013). In article 10-30, convention specifies the civil political and economic social and cultural rights specified for the well been of the people with disabilities. Among them, apart from the Human rights accepted in the united nation's 7 core human rights treaties, right of Equal access to justice (article 13), freedom from abuse and exploitation (article 16), right to personal mobility (article 20) and

right to habilitation and rehabilitation (article 27) are most significant. The CRPD has further established a system of monitoring and implementation (articles 31-40) and includes final provisions that govern the treaty's operation (articles 41-50).

Apart from the conventional protection, under its optional protocol, the committee on the protection of the rights of persons with disabilities was established to receive communication from individual and groups of people who live in state party to the protocol (CRPD optional protocol article 1). However, prior to the complain, all the domestic remedies should be exhausted (CRPD optional protocol article 2). If the complain fulfils all the requirements in article 2, the committee should submit the communication to the relevant state party and request a report within the 6 month period (CRPD optional protocol article 3). At the same time, after the submission, the state should take appropriate measures to prevent any human rights violation against the complainant (CRPD optional protocol article 4). After the examinations, the committee shall forward its recommendations if any to the state party. If they are not satisfied with the state action, or if committee observes further systematic or gross human rights violation against persons with disabilities, they may conduct an inquiry incorporate with the state party. At the end of the inquiry, committee may request the state party to submit the report under article 35 of the convention, including measures taken in response to their recommendations (CRPD optional protocol article 7).

## II. SRI LANKAN SITUATION

Sri Lanka is a country, which has over 30 years conflict experience, from 1978-2009. However,

After the completion of humanitarian operation on 2009 in the post conflict era, Sri Lanka rapidly continued its development activities in a growing manner. However, parallel to the country's infrastructural development, it is needless to say about the necessity of a proper human rights protection mechanism to up bring the economic and social condition of the citizens, especially for those who have spent over 3 decades under conflict situation. In such a transitional period, among the other group of individuals, as a most vulnerable people, protection of the rights of the people with disabilities is most significant. Therefore, it is necessary to examine the effectiveness of the existing legal framework and available mechanisms to protect the rights of the Sri Lankan disabled community.

Article 12 (1) of the Sri Lankan constitution guarantees the right to equality and non-discrimination as a

fundamental rights. Further, according to article 12(4) of the constitution, the government may allow to take any affirmative action for the benefit of the persons with disabilities (Jayawardena, 2014). In accordance with the said provision, government had a public administration circular no. 3 of 1988 to grant the 3% of vacancies in public services and public companies, for the disabled candidates who had appropriate qualifications. Further, under Social Security Board Act (1996), national health policy (1996), and Ranaviruseva act (1999) also included the relevant provisions to ensure the wellbeing and security of persons with disabilities. Further, in 1997, under general educational reforms, the government had taken a landmark decision to give inclusive education to children with disabilities in the ordinary classrooms. However, lack of data collection and disorganization of monitoring mechanisms, made it further difficult to find necessary groups of disabled people, who need special care and benefits under aforementioned schemes and policies (Aloysius, 2002). As a solution to the aforesaid problems, in 1996, protection of the rights of persons with disabilities act (number 28 of 1996) was formed as a key legislation to address the issues related with Sri Lankan disability rights perspective.

For its interpretation clause, persons with disabilities" means any person who, as a result of any deficiency in his physical or mental capabilities, whether congenital or not, is unable by himself to ensure for himself, wholly or partly, the necessities of life (protection of the rights of the persons with disability act, section 37).

Therefore, according to the preamble, the purpose of this act is set the platform for the promotion, advancement and protection of the rights of the persons with disabilities. In its' means, it further established the "National Council for the persons with disabilities", as a main administrative body to take appropriate decisions on behalf of the disabled community. Apart from the minister, who was officially appointed as a president, membership of the council consists of 21 total members, with 11 from voluntary organizations and other 9 from government representation.

According to section 12 of the act, the principle function of the council is taking appropriate measures to promote and protect the rights of persons with disabilities. Contrary to the said provision, under section 13, the council granted powers to submit its' advises and consultations for relevant ministries and government authorities, in the interests of disabled people. Further, the council has power to make necessary policy frameworks as a guideline to government and private institutions.

In 2003, under the supervision of the council, the National Policy on Disability (N P D) was prepared by the government to comply with the Sri Lankan disability rights sector with existing global developments. Most importantly, this policy was able to address newly identified disability related factors such as promoting accessibility (N P D paragraph 12), introducing assistive technical devices (N P D paragraph 14) and making barrier free environment (N P D paragraph 3(1)). Further, on the basis of the concept of inclusive society, the policy proposed community based rehabilitation (N P D paragraph 21), and active participation of the private and public sectors, and nongovernmental organizations for the protection and promotion of disability rights (N P D paragraph 22, 23). Although such important rights are included, unfortunately N P D have no appropriate mechanism to implement any of its provision through any court or tribunal (N P D paragraph 26).

In 2006, under the disabled persons accessibility regulations (regulation 1 of 2006), the government took a landmark decision to make all the public places and public buildings accessible for persons with disabilities. According to section 2 of the regulation, within a 3 year time period, all the existing public buildings and places had to be made accessible. After 9 years of implementation, today also, most of the public buildings have no appropriate accessibility facilities for people with disabilities. In *Dr. Ajithperera vs AG* (2009 SC) while considering the fact, supreme court had emphasized the necessity of implementation of said regulation in a progressive manner.

However, with the commencement of said judgment, Sri Lankan disability rights movement restarted their U N C R P D ratification campaign with more energy and international cooperation. As a result of the series of discussions held within the state officials and disability rights activists, the proposed disability rights draft bill is prepared with 65 clauses (Hettiarachchi, 2009). In comparison to the present act, it guarantees the right to medical treatment, personal mobility and habilitation and rehabilitation as a right of peoples with disabilities. Further, it proposes to grant more powers to national disability authority, as an independent body consistent with disability rights activists and disabled peoples. However, lack of consensus among the powers of proposed disability authority made a huge contention among disability rights activists and government officials. Unfortunately, due to this endless contention, Sri Lanka still has not been able to present new legislation to the parliament.

### III. CONCLUSION

Over the years, people with disabilities are considered as a marginalized group within the society. As a result, until the last 2 decades of 20<sup>th</sup> century, they were unable to represent their views as a community in national or international decision making forums. Because of the great struggle led by disability rights activists and members of the nongovernmental organizations, in 2006, United Nations Convention for the Rights of the Persons with Disabilities and its optional protocol was formed as a first Human Rights Treaty within the 21<sup>st</sup> century.

During the last 8 years of its adoption, over 160 countries and regional organizations have taken appropriate measures to ratify the convention. Most surprisingly, the world's poorest countries like republic of Congo, Ethiopia, Mozambique are also in this category. Further, mostly war affected countries like Rwanda and Sierra Leone have enabled their citizens to bring their claims to disability rights committee by enabling its optional protocol (Lord and Stein, 2013). In Sri Lanka, although right to equality has been accepted as a fundamental right, till today, it has been unable to realize equal treatment for the persons with disabilities by enforcing an appropriate human rights mechanism (Campbell, 2009). In 1996, although National Council for the Persons with Disabilities was established, due to its minimum powers and continuous political interference, it was unable to fulfil the adequate expectations of the disabled community. In this context, to certify the adequate protection for the persons with disabilities, it is necessary to legally enforce the rights of the U N C R P D convention within the Sri Lankan law system. Further, due to various accessibility problems and procedural errors in the existing court system, it is appropriate to establish a special tribunal for disability related issues.

Therefore, as a nation it is most suitable to come to a final consensus regarding final draft of the proposed disability rights bill and necessary to take immediate steps to present it to the parliament.

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