

Why are we in favour of passing of The Rights of Persons with Disabilities (RPD) Bill?

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One of our jobs is to analyse and critique policy documents. Our first reaction to The Rights of Persons with Disabilities (RPD) Bill was negative. We saw many lacunae. But then we decided to take an objective view by looking at both the positives and the negatives. We also tried to understand the socio-political scenario and how difficult it has been to influence disability issues in the country, based on our experience of almost two decades in disability advocacy. This effort has helped us to form a view on whether we should support the Bill or not. Here, we share our thoughts.

1. What are the major gains for people with disabilities from the RPD Bill?

Let's look at some of the major gains for persons with disabilities when this Bill becomes an Act.

- Definition of disability is exactly the same as given in the CRPD, which is a huge gain. The Bill lists about 19 impairments as mentioned in the schedule (annexure) but these categories are not sealed. There is a provision for adding impairments to the schedule. It is mentioned 'Any other category as may be notified by the Central Government'.
- A comprehensive definition of 'Communication'. It provides for measures to be taken to make all contents accessible and it states persons with disabilities have access to electronic media by providing audio descriptions, sign language and close captioning. There was no mention of sign language, access to media or audio description/ close captioning, etc. in the Act of 1995.
- There is a section for Equality and Non discrimination to ensure that persons with disabilities enjoy the right to equality, life with dignity and respect for her/his integrity equally with others and should not be deprived of her/his personal liberty on the ground of disability. It also mandates governments to take special measures to protect the rights of women and children with disabilities by providing appropriate environment.
- There is a Section on Community Life, where it clearly states that a person with disability has the right to live in the community.

- There are Sections on Protection from Cruelty and Inhuman Treatment; Protection from Abuse, Violence and Exploitation; Protection and Safety; Home and Family. These were not even considered or recognised in earlier policies with respect to people with disability.
- Access to Justice has been explicitly mentioned.
- It provides the right equally with others to own or inherit property, control financial affairs, have access to bank loans and other forms of financial credit. It provides for support in decision making and respecting autonomy, dignity and privacy.
- Social Security has many new and much needed aspects like - access to safe drinking water, sanitation facilities, medicines, diagnostic services and corrective surgery free of cost, caregiver allowance, insurance scheme, support to women with disability in livelihood and bringing up children.
- Quantum of assistance to persons with disabilities under social security schemes and programmes shall be at least twenty-five per cent higher than similar schemes applicable to others. Recognising 'disability cost' and making a provision for it is a major gain.
- Separate Sections on Culture and Recreation and Sporting Activities with quite a few relevant and much needed provisions.
- In education, it provides for recognised schools to admit students with disabilities without discrimination; provide accommodations, individualised support, transportation, make modification in curriculum and exam systems, and many other important provisions.
- Reservation in higher educational institutions has been increased from 3% to 5% for persons with disabilities. With an improved definition of disability, a lot more people would be covered.
- Reservation in Government employment has been increased from 3% to 5% for persons with disabilities and covers more categories of people with disabilities like intellectual impairment, mental illness, autism, multiple disabilities, including deaf blindness etc.
- Increase from 3% to 5% reservation in all poverty alleviation programmes. Priority to women with benchmark disabilities has been added.
- Introduction of 5% reservation in developmental schemes. Priority to women with benchmark disabilities has been added.
- Introduction of 5% reservation in allotment of agricultural land and land for purpose of housing, business, recreation, etc.
- There is a provision for Special Courts for each district to try offences under the Act.

- There is a provision for District Level Committee of Disability for implementing the Act.

2. What are the concerns on RPD Bill and what do they imply/indicate?

Let's look at some of the major concerns. We have tried to reason some of them out. We have tried to see them as areas for improvement by amendments; to see if they can be interpreted to our advantage and identify issues to build consensus within the disability sector. However, we are in no way endorsing them.

- The clause that says, "no one can be discriminated on the basis of disability.. unless.... it is a proportionate means of achieving a legitimate aim". We would not like a sub clause "unless...." to be there. Government seems adamant about it. However, it is for the other party to prove 'proportionate means to achieve legitimate aim'. Drawing a parallel to them term 'reasonable accommodation' which is to do with non-discrimination. Doesn't it allow discrimination if accommodation causes 'undue burden'? However, the onus to prove 'undue burden' is on the other party. Many people benefit from reasonable accommodation and a few are denied based on 'undue burden' which can be challenged.
- The clause "no one can be discriminated on the basis of disability... "does not mention who cannot discriminate (for example, it does not say 'establishments cannot discriminate". It simply says 'No one'). This clause could probably be used to make private sector accountable. There are many instances of people with disabilities being denied entry in restaurants, travelling, employment etc. This clause could be used to protect them.
- The clauses related to Legal Capacity are not adequate. However, there have been amendments to that. It is still not being seen as adequate by some people with disabilities. We agree. What is available in the current Bill, is full legal capacity in financial matters, "the person with disabilities have right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit." This is a definite gain. There are mentions in the Bill about "independent and informed decision making", "free and informed consent", etc. which again are positive and these terms are being used for the first time in any disability policy. The issue of guardianship has been contentious within the disability sector. We really hoped that this law could take a stand and seal the debate based on the CRPD. That is unfortunately not happening now. We certainly have more work to do in this area.
- Regarding the issues related to reproductive rights. In the Section on Reproductive Rights, it states, "No person with disability shall be subject to any medical procedure which leads to infertility without his or her free

and informed consent". This is a major gain. However, in the section on Penalties and offences, there is a sub clause stating punishment would be given to anyone who performs any medical procedure to terminate pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability". This exception should not have been there. Certainly an issue that needs to be addressed through an amendment.

- The Bill says that posts would be identified in establishments to be reserved for people with benchmark disabilities. Ideally, "identification of jobs" should not be there. However, this is under the section on Reservations. There is a separate chapter on Skill Development and Employment which clearly states that no establishment shall discriminate against any person with disability in any matter relating to employment. Therefore, this clause could be used to protect the rights of persons with disabilities in employment in all other posts. How the identification is done could also be influenced.
- Coming to the clause where 'unsound mind' is mentioned as one of reasons for removing the Chairpersons / Members / Members of Advisory Board. One would like this clause to be deleted. The term 'unsound' is quite vague. However, the Government seems to be adamant about it. The clause regarding removal of members if she/he has become "physically or mentally incapable" has been deleted. This is a gain. The worry that some people have is that the clause 'unsound mind' can be misused against people with mental illness. However, there is a non discrimination clause protecting people with mental illness in the Bill. If a person with mental illness is not given this job or any job or is removed due to mental illness, it would be seen as discrimination under the law. We would have liked disability bill to have made the beginning by not having the word "unsound". We see this as a failed effort and work should continue to bring about a change. This Bill has many positives for people with mental illness and intellectual impairment, which were never recognised before like, non discrimination in employment, reservation in jobs, right to protection from inhuman treatment, right to live in community, etc. These were never considered before. Infact, mental illness was given as a valid reason for denying many opportunities. These are certainly a few steps forward from where we are currently.
- We would have liked in one stroke that all the discriminating Acts could be repealed by introducing a relevant provision in the Bill. This has not happened. This again shows we have a long way to go and all of us together have to actively work towards it.
- Some people have criticised that sign language has not been recognised as a language in the Bill. If it had done that, it would have been great. We all want this. However, the Bill mentions sign language in access to communication, which is gain. It also talks about close captioning which is another gain for deaf people. Do we reject these just because sign language is not recognised as a language? We need to work towards getting sign language recognised as one of the official languages of the country.

- We all want the Bill to state that Chairpersons should be persons with disability. This is not there in the Bill. However, with several years of advocacy, we have got a Chief Commissioner and a few State Commissioners with disability even without the law, based on their merit. We should continue with our advocacy to ensure that meritorious people with disabilities become Chairpersons and Members.
- We also wish private sector was covered under the definition of establishment. We would have liked Political participation in terms of right to contest elections/hold office as mentioned. All these areas need to be further worked on.

3. Why are we supporting the RPD Bill?

The RPD Bill falls short of the CRPD standards on some issues. There has been dilution of the Bill in comparison with the earlier draft. It is not the perfect Bill that we all would like to see. However, the amendments that have been made are in the right direction. There are quite a few remarkable provisions in the Bill which will be a definite gain for people with disabilities if this Bill becomes an Act. We have also looked at the concerns. These are certainly genuine.

Strategies for advocacy evolve keeping the various aspects and circumstances in mind. Advocacy is also a continuous process which requires continuous effort. Given the fact that this is the last session of the Parliament for this Government, and that the Bill has come to this stage of tabling and passing, the opportunity and the time are of essence. We feel taking a stand 'Everything or Nothing' will not take us anywhere. We could lose several years in the process and in the end we may still not get what we are looking for - a perfect Bill.

The gains that would be available from this Bill for persons with disabilities outweigh the negatives. We would like to see it become an Act. We see RPD Bill as the beginning with respect to rights of persons with disabilities.

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