

Women with Disabilities India Network

His Excellency
Shri Pranab Mukherjee
Hon'ble President of India

It is with great regret that we bring to your attention the missing women from the Draft 2013 Bill on the Rights of Persons with Disabilities. The Bill is supposed to be based on the UNCRPD which India has signed and ratified.

Status of Women with Disabilities in India

It seems history is being repeated as we were not included in the 1995 Act, and now 50% of the women's population including girls with disabilities is completely missing with reference to their empowerment. We are grateful to your Excellency that you did not sign the proposed ordinance of the Disability Bill and is referred back to the standing committee. However the great infirmities with reference to women with disabilities remain to be addressed in detail (Annexure I).

Missing Articles and Issues

Art 6: Women with Disabilities

Art 7: Right to Education of Women and Girls with Disabilities

Art 8: Right to Work and Employment of Women with Disabilities

Art 10: Right of Women with Disabilities to Health

Art 12: Access to Justice for Women with Disabilities

Art 13: Obligations of the National Commission for Women

Reproductive Rights especially forced sterilization, Dilution, Gendering, Burden of parenthood on women are some of the major issues that need to be addressed. Moreover, the Disability Bill in its present form does nothing to address discriminatory and incapacitating provisions in other laws in force in India. To provide meaningful empowerment and full participation to women and girls with disabilities it is essential to look at all laws including disability specific legislation and bills with reference to their needs and requirements through disability specific and age appropriate lens.

Sir, we earnestly request your support in the endeavor to bring about the much required change in the marginalized status of the girls and women with disabilities in India.

A note on women with disabilities, and what this Bill means to them

There is a difference between inclusion, and empowerment. A healthy scattering of "women" around a Statute does not make it meaningful for women, and even less so when we speak of women with disabilities.

Women with disabilities were missing from the 1995 Act, and so during the drafting process for the new Bill, which started in 2010, the concerns of women and children, particularly girls with disabilities, was a huge concern. Sadly, the Bill as approved ultimately by Cabinet, as well as in the notified amendments does not address these concerns adequately. The UNCRPD lays down very specific obligations of the State while discussing the multiple discrimination faced by women with disabilities. States are obliged to take measures to ensure the full and equal enjoyment by them of all human rights

and fundamental freedoms. States are also obliged to take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms guaranteed under the Convention. The Bill fails to acknowledge these beyond a cursory “hat tip” in Section 3 (2) which says that the appropriate Government shall take special measures to protect the rights of women and children with disability [*sic*] and also take steps to utilize the capacity of persons with disabilities by providing appropriate environment, and is limited to “protection” of the rights and not empowerment. The right under Article 6 is inexplicably relegated to sharing a subsection with an obligation to utilize capacity.

One of the greatest threats to women with disabilities is the **failure to recognize the right to legal capacity of all persons with disabilities and to recognize them as persons before the law**. Women with disabilities are much more prone to being victimized and deprived of their property rights because of such provisions, amounting to “civil death”. Especially in family courts, terms like “unsound mind” are thrown about very easily, and it was reported that a staggering 40% of cases of divorce were on the grounds of unsound mind before family courts in Chennai. The declaration of unsoundness of mind by one court often creates a domino effect to deprive women of their rights – to their children, to maintenance, to alimony, to their inheritance, and even to personal liberty.

There are also serious violations of the **reproductive rights of women with disabilities** as will be seen when in the context of Section 106 (f) which allows for termination of pregnancies without consent of women with “severe” disabilities – what is a “severe case of disability”, can this opinion be of any “registered medical practitioner”, and why is the opinion of the guardian being sought and not that of the woman concerned? While Section 3 (4) of the Medical Termination of Pregnancy Act, 1971 is violative of the UNCRPD by allowing for such terminations in case a woman is “mentally ill”, this Bill, let alone amending it, actually extends the removal of legal capacity with regard to decisions of child bearing to all women with disabilities. This also overturns case law (Suchita Srivasatava, Supreme Court, 2009) with regard to legal capacity of women with disabilities to make reproductive choices.

The Bill states that no person with disability shall be subject to any medical procedure which leads to infertility without his or her free consent, in Section 9 (2). This section is also problematic because the test is a “procedure which will lead to infertility” and not procedures/medications which could possibly lead to infertility. For persons with psychosocial disabilities, who will be placed under guardianship under Section 13 of the proposed Bill, the question of their own consent does not arise as their guardian, be it limited or plenary, is empowered to take “all legally binding decisions” on their behalf.

The Bill provides for reservations in Special Schemes and Development Programmes under Section 39 with preference to women with disabilities. Unfortunately, as the Bill does not recognize absolute legal capacity for persons with disabilities under Section 12, 13 and 14 of the Bill, even the benefits for women with disabilities are pointless because of the fetters on legal capacity which will prevent them from holding property, assets etc. in their own names, especially if, as the amendment says “limited guardianship is the norm”.

The provisions which support institutionalization under Chapter IX of the Bill, as well as there being no express bar against institutionalization without consent of the person, will hurt women with disabilities more, as they are more prone to being institutionalized. Again, while looking at the freedom against abuse and exploitation, under Section 6, **there is no monitoring mechanism to look into the instances of violence which occur in institutions**. It is well documented that women in institutions for persons with disabilities are routinely and regularly abused. This Bill does nothing to redress this situation.

The **right to family** provisions are also extremely flawed and will hurt both women and children with disabilities. The right under the UNCRPD for all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is not recognized under Section 8 of the Bill on “home and family”. In addition, whatever exists of this right is gravely threatened by the failure of the Bill to categorically grant legal capacity to all persons with disabilities. Those under a system of guardianship will still be unable to exercise this right.

Under the UNCRPD, in no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents. The right of parents with disabilities to retain care of their child is not reiterated in the Bill, under Section 8, which is problematic because the **Juvenile Justice (Care and Protection) Act, 2000** deems children who have a parent or guardian who is *unfit* or *incapacitated* to exercise control over the child to be “children in need of care and protection” under Section 2 (d) (iv) and therefore the child may be under the consideration of the Child Welfare Committee for placement in accordance with the law. An unequivocal statement of the right to parenthood was the need of the Bill.

Section 8 also in fact allows for children with disabilities to be taken away from their parents on the ground of disability alone, if a Court orders so, which is clearly violative of the UNCRPD and the CRC. It also modifies the position of the Juvenile Justice Act again, which identifies a child with disability in Section 2 (d) (iii) as “a child in need of care and protection” *only* if it has no one to support or look after.

The stress of the Bill, the media, and debates on the amendment is on the **allegedly beneficial provisions with regard to reservations in Government Employment**.

The applicability of the statutes mentioned in this discussion, and many others that discriminate against persons with disabilities, are protected by Section 110 which says that the provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law for the time being in force. Therefore all laws which exist and which are derogatory to the rights of women and children with disabilities, are protected, and may actually override the provisions under this Bill under certain circumstances. **Therefore, the Bill not only creates its own problems for women with disabilities – it also upholds existing ones.**