

National Human Rights Commission of India

Role of National Human Rights Institutions in Promoting and Protecting the Rights of People with Disabilities

12th Annual Meeting of APF

27.9.2007

INTRODUCTION: -

The approach to people with disabilities both nationally and Internationally, has, for far too long, been built on a model of care and entitlement based on charity and the assumptions that disability is an individual pathology, a condition grounded in the psychological, biological or cognitive impairment of the individual. Having taken note of the historic grounds, which perpetuate on the equalities on the basis of physical and intellectual characteristics, the Commission is committed to create conditions in which persons with disabilities can enjoy their human rights and fundamental freedom on equal basis. This means combating disability based discrimination. National Human Rights Commission (NHRC) since its inception in 1993 has paid special attention to the rights of the disabled. The Commission had a special reporter for disability. Commission has focused on policy interventions, capacity building, ensuring exercising of right to employment, arrangements to ensure access to right to education. The Commission played an active role in drafting of the UN Convention on disability.

UN CONVENTION ON DISABILITY: -

The Special Rapporteur of the National Human Rights Commission of India was representative of the National Human Rights Institutions in the Adhoc Committee. During the discussion various areas including article 33 of the draft Convention and definition on general obligations, equality and non-discrimination, legal capacity, education, health and environment were discussed.

The Asia Pacific Forum requested the Commission to urge the Govt. of India to direct its representative to support during the Adhoc Committee discussion for adoption of Article 33, which supported the role of National Human Rights Institutions. In pursuance, Hon'ble Chairperson of the Commission requested the Prime Minister of India vide letter dated 23rd August, 2006 to advice Indian delegation to UN Adhoc Committee to inform its position accordingly and reflect India as a responsible member of international community capable of assuming an important role in international affairs and governance.

The commission is gearing up to the role of monitoring the implementation of rights of the disabled.

1. NHRC India will continue to follow up on its earlier recommendations to the Government of India to create an independent department of disability at the Union level.
2. Continue to work towards creating a barrier free environment for the persons with disabilities.
3. Continue to work towards capacity building of persons with disabilities.
4. The NHRC India will request the Government for accession of the UN Convention and its Protocol.
5. Although the Municipal Laws in India including Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 are very much in line with the Convention, however, the Commission will continue to request the Government to make appropriate changes in the Act to facilitate the accession of the Convention.

CAPACITY BUILDING BY NHRC, INDIA: -

The Commission has been deeply concerned about the rights of the persons with Disability and their capacity building in this regard. Further, the disability rights are a new dimension in the human rights regime and much needs to be done to develop awareness among legal practitioners and academics across the country. Towards this end, the Commission launched a project in the year 2003 in partnership with the Canadian Human Rights Commission (CHRC) and the Indira Gandhi National Open University (IGNOU) to orient legal practitioners, academics, activists with domestic and international law, encouraging its creative application for better protection and promotion of the rights of the persons with disability. Under this project three key areas were identified, namely: -

- a) A curriculum design
- b) Training and reference material.
- c) Trainers to teach Human Rights, disability and law course in a stand-alone mode or as part of formal and non-formal courses in law and human rights.

Under this project a Training of Trainers program, National Workshop and five outreach programmes across the country in different universities were also organized during July 2004-March 2005. On June 23, 2005, the Commission hosted a National Conference on Human Rights and Disability. The objective was to crystallize strategies for mainstreaming disability in the development agenda of the country. The conference brought together all the major stakeholders like senior officials of concerned Ministries in the Government of India, NGOs working in the Disability Sector, persons with disabilities, heads of Apex Institutions such as State Commissioners for Persons with Disability, State Welfare Secretaries and Vice Chancellors of universities. To keep disability under the spotlight, the participants endorsed establishment of independent Department of Disability and Development (DDD) on the lines of Department of Women and Child Development, Government of India. The deliberations of the Conference were incorporated in the recommendations, the recommendations are arranged in three parts: Part I recommending broad policy changes for systemic improvements and sustainable development. Part II recommending specific measures by Apex Institutions for improving capacity of public administrators, field level functionaries and other service providers. Part III recommendations are addressed to various ministries and

departments of the Government for incorporating human rights awareness component in the training programmes for persons with disabilities and rehabilitation workers. Manual for Disabled was also released on the occasion.

RIGHT TO EMPLOYMENT: -

India over the last 30 years has put in place an impressive range of legal framework and administrative mechanisms to boost employment of persons with disabilities. However, for realization of the rights of persons with disabilities, there is a need to have a systematic effort so that the institutions and their functionaries who administer the employment are made fully conversant with the complexity of legal and administrative arrangements. Interventions by National Human Rights Commission of India have focused on;

1. Handbook on Employment of Persons with Disabilities in Government of India :-

The Commission published a Handbook on 'Employment of Persons with Disabilities in Government of India'. The Handbook is expected to serve as practical guide for the administrators, legal practitioners and persons with disabilities in employment or seeking employment.

The handbook is in a Question and Answer form and replies almost all questions concerning the issues of employment of persons with disabilities. The handbook also advocates the importance of a barrier free environment.

Rights of Persons with Disabilities of the right to work, some fifteen hundred cases and complaints were analyzed and it was found that lack of awareness and sensitivity on the part of government functionaries is the key obstacle including negative mindset. Socio-Legal Information Centre, Delhi, assisted the Commission in consolidating the findings in the shape of a Handbook on Employment of Persons with Disability in Government of India. The book has been arranged in fifteen chapters and is a response to most frequently asked questions in the light of relevant laws, by-laws, rules, executive orders and instructions. For proper consideration of court law, examples of jurisprudence have also been cited. During the course of this study, many inconsistencies in the service rules came under sharp focus, and, therefore, Central and State Governments have been asked to undertake a systematic review of service rules to ensure their compatibility with the act.

Employment related provisions comprise the core element of the Persons with Disabilities Act, 1995. However, these have been visiting courtrooms leading to the largest number of judicial pronouncements around them with the aim to identify factors leading to gross violations.

2. Intervention by NHRC India in the National Employment Guarantee Scheme

The Govt. of India through an Act introduce National Employment Guarantee Scheme. The Hon'ble Chairperson of the Commission requested the then Finance Minister to delete the reference of able-bodied persons and to make appropriate provision for employment of persons with disabilities. Accordingly, the word 'able-bodied' was deleted from the Act.

RIGHT TO EDUCATION :-

According to the Census 2001, there are 21.9 million persons with disabilities in India who constitute 2.13 per cent of the total population. Today, as it stands, their rights are more a myth than reality. Fifty one per cent of them have no access to education and 66 per cent of the disabled are unemployed. Presently Commission is focusing on:

1 Project on 'Sign Language' :-

The Commission had received a representation from the Delhi Association of Deaf, a NGO working in the field of hearing impairment, regarding the discrimination being faced by persons with hearing impairment. The Commission was astonished to find that the deaf children generally do not receive education through the medium of sign language, reason being non-availability of child centered sign language in the country and the absence of sign language training from the teacher education programmes for the deaf. To remove this injustice, the Commission advised Ministry of Social Justice and Empowerment and the Human Resource Development to support a project for standardization of the sign language for the deaf children in age range of 0-14. Towards this end, the Commission facilitated a series of meetings and workshops involving a number of institutions and experts. These consultations were useful in developing a project outline in a multi-partner mode. After extensive deliberations, a project concerning development of Indian sign language was evolved, involving other project partners like National Council for Educational Research and Training, New Delhi, National Institute of Hearing Handicapped, Mumbai and British Council, New Delhi. During the project, a technical vocabulary of sign language will be prepared. At the instance of the Commission, the Ministry of Social Justice and Empowerment, Government of India has extended the necessary financial and technical assistance to the Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai (NIHH). The institute has been designated as a nodal agency for the implementation of the sign language project.

2. Intervention by NHRC India at the School level :-

The NHRC India has been intervening in various cases to realize the Constitutional obligation of the State to provide education without discrimination. In a case of a young girl student, who has been suffering from paralysis in her lower limbs since childhood and, who is totally dependent on a wheel chair for every movement, had been facing difficulties in attending classes, as her mother had to take her wheel chair to the classroom located on the first floor of the building of the school everyday. Taking cognizance of the issue, the Commission directed the

District authorities to look into the matter and submit their comments. The matter is still under consideration of the Commission. Similarly, the Commission has intervened in the case of discrimination against a visually impaired person who had been refused admission, as he was blind. Taking cognizance, the Commission directed the Department of Education, Government of Andhra Pradesh, to look into the matter and send his comments. The matter is still under consideration.

The National Human Rights Commission of India was shocked to learn that blind students routinely receive their Braille textbooks towards the fag end of the academic session or worse still, a majority do not have access to these books at all. Upon delving deep into the matter, it was found that many States and UT administrations have not even set up a single Braille press. Recognizing that children with disability have a right to receive an education in an appropriate environment, the Hon'ble Chairperson, NHRC requested to the Chief Ministers of all the States and Union Territories stated that there is a need to ensure that the printing of books in Braille go simultaneously with the printing of regular books. In order to ensure timely availability of Braille textbooks, the services of high speed computerized Braille presses could be utilized. This would ensure education in an appropriate environment for blind students, in accordance with Section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Future role of NHRC India :-

1. The National Human Rights Commission of India will make efforts to sensitize the policy makers and its implementers towards the rights of persons with disabilities.
2. The Commission of India have been and will continue to take suo moto cognizance on the various reported cases of discrimination being faced by the persons with disabilities.
3. The Commission will monitor the implementation of 3% reservation in employment to the persons with disabilities as provided in the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995
4. The National Human Rights Commission of India will continue to monitor and if need be intervene to ensure that education is provided to all including persons with disabilities and will try to ensure that all the educational institutions are barrier free and accessible.
5. NHRC India will create a force of trainers of trainers to spread awareness and make the education imparters sensitive towards the rights of persons with disabilities.