

**Technical Session I**  
**The International and**  
**National Normative Order**

**Chairperson:** Mr. Murali Bhandare, Senior Advocate, Supreme Court of India

**Co-chairperson:** Dr. Poornima Advani, Member, NCW

**Speakers :** Prof S.K. Verma and Santosh Rungta

In his introductory remarks the Chairperson, Mr. **Murli Bhandare**, Senior Advocate, Supreme Court stated that the awareness about human rights around the world led to the adoption of the Universal Declaration, Covenants on Civil and Political Rights, Economic, Social and Cultural Rights, the Optional Protocol and the Declarations on the rights of the disabled. They provide the guidelines and goals like the Preamble of our Constitution. The international instruments emphasise the principles of equality of rights, inherent in the concept of human rights and expressly embodied in all the instruments. These instruments confer on disabled persons the same rights as given to other persons. In fact what might be termed as specific rights of the disabled persons are only the material and legal expression of the minimum contribution. He suggested that the State should make provisions towards ensuring that such persons enjoy on an equal basis all the human rights, enjoyed by individuals in general.

Referring to the mentally retarded persons, he suggested that a free pass should be given to them and also to accompanying person to travel by buses and railways. It may be noted herein that just because the pass is available they will not travel all the time and hence no question of its misuse. He suggested that the word 'disability' be added in Article 15 and 16 of the Constitution.

**Dr. Poornima Advani**, Member, National Commission for Women who co-chaired the session emphasized the need of sensitization and creation of awareness among various groups. According to her, gender sensitization and awareness campaigns are the best examples and that is the kind of awareness and sensitisation that one would have to really campaign for as far as persons with disability also concerned. But there has to be a holistic approach. It is not only enabling legal environment but one can call it a physical, social and legal environment. One of the mandates of the National Commission for Women is to visit homes,

government funded homes, homes for mentally retarded girls and also jail all over the country, she added. She narrated her one of the visit to such a home and where she found deplorable conditions existing there. This requires the urgent attention of the government she added.

**Prof. (Ms.) S.K Verma**, Director, Indian Law Institute presented a paper on the "Role of International Law in Protection and Empowerment of Persons with Disabilities". While introducing the international legal regime for the protection of persons with disabilities, she said that the whole movement on human rights in its present form has started from the international sphere including the rights of the disabled. In the case of disabled, apart from the 1971 and 1975 Declarations, there is another Declaration adopted in 1969 by the General Assembly which talked about social progress and development, and it was followed by a Declaration on the rights of mentally retarded persons in 1971. Subsequently the Declaration on the rights of disabled persons was adopted in 1975. The Declaration on Social Progress and Development states that all persons have the right to live with dignity, and emphasise the need to assure disadvantaged or marginal sections of the society of equal opportunity for social and economic advancement, in order to achieve an effectively integrated society. It further stated that social progress and development should aim at the protection of physically or mentally disadvantaged. It also stated that the government should take appropriate measures and institute appropriate machinery to rehabilitate the mentally and physically disabled persons. Further, it also suggested for taking measures to provide treatment and technical appliances, education, vocation and social guidance, training and selective placement and other assistance required and creation of conditions in which the handicapped are not discriminated against because of their disabilities. Same spirit was carried on in the Declaration on the rights of mentally retarded persons, according to which, a mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation, and guidance, which will enable him to develop his ability to the maximum potential. It also provided that such a person has a right to protection against exploitation, abuse and degrading treatment beside other things as stated in the 1969 Declaration. Same spirit was carried out again in the 1975 Declaration.

She observed that the definition of disability as provided in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is not in consonance with the 1975 Declaration, because the Act defines it broadly. The 1995 Act specifies under Section 2 as to who are disabled persons. But this definition has also not been found satisfactory and the Committee set up by the Government to review the 1995 Act has suggested for making amendments to bring in various other categories of persons under its fold.

Besides the above Declarations, the rights of persons with disabilities was also covered in the general conventions or declarations of the United Nations in a different light, viz., under Article 2(3) of the Declaration on the Right to Development 1986; Article 22 of the Vienna Declaration and Programme of Action, 1993.

At the regional level we have the Proclamation on the Full Participation and Equality of People with Disability in the Asian and Pacific region, which was adopted in Beijing in 1992. The main idea behind laying more emphasis on these declarations is that though all these Declarations have been adopted, they are merely declarations. Generally speaking if it is a treaty then, and those countries that are parties to it, are bound by its obligations. This is not so in the case of declarations. Declarations are soft law, which means they do not create any legally binding obligations for the states. In contrast under the treaties, there is a machinery for enforcement though it is not perfect but it is there. There is no sanction imposed against the states even though they are obliged to file the reports from time to time. There is always a body under that particular Convention where the state party has to go and defend its report. And there are, under certain treaties provisions where the persons concerned directly can make a complaint to the international machinery, but unfortunately India has not become a party to any of these protocols under these treaties where the individuals can make a complaint at the international level to these particular bodies. So individually we cannot really go to the international committees, international bodies and make the state accountable. So what is the value of these Declarations? Now if we look into the provisions of the Constitution, Article 51(c) states that the State must give respect to declarations and other international obligations. Article 51 is part of the directive principles which, on the face of it, non-enforceable. One cannot force the state to do something. On the other hand, if there is a treaty, and if the State wants to give effect to it, it can go ahead under Article 253, and can legislate upon it, even if the matter pertains to the state list, it may legislate overriding this very classification and the schedule VII between the state list or between the union list or the concurrent list. Though these declarations are not binding on the State, but on the other hand we have legislated and this we have done not for the reason that these are the declarations but because of our commitment.

In 1992 in the Beijing Conference, it was decided to designate the decade 1993 to 2002, as the decade of the disabled which is continuing. In that context, the government of India just to fulfil its obligations and also to give some effect to the social clauses in our Constitution even in the Preamble itself that it thought that it is in the fittest of the things that if it does that in that particular direction, and hence we find that there are few Acts, viz. the persons with Disabilities Act 1995, and then the Trust for Persons with Mental Retardation Act, 1999 which talked about the

rights of the disabled. The 1999 Act, has not yet been implemented. We do not know really how will it take shape in the execution or in the implementation. But we have already seen that 1995 Act has not made much dent especially in the area of extending reservations for the disabled in employment and education.

Narrating her personal experience she said that while she was the Dean at the Delhi University Law Faculty, in 1998 there was a student who was a disabled person, and he wanted to take the admission based on the provisions of the Act. We had reservations for a certain disabled in the University, that is, the blind persons. There is a University directive in that regard but for other disabilities there is hardly any place in the educational system. So he was telling that there is this 1995 Act about which no one knew in the university, though it was notified on February 7, 1996. The candidate was duly admitted to the course. Thereafter she wrote letters to the Vice Chancellor and the Dean, Student Welfare telling them to fulfil the legal obligation by giving reservations to persons with disabilities. It does not mean that 3 percent reservation is sufficient; steps should be taken to make an assessment of the same to raise the percentage if necessary. We have yet to go a long way to create appropriate atmosphere in the University system, including accessibility not only to the libraries but also to the buildings, which need to be moulded to the needs of the disabled, she added.

**Santosh Rungta**, General Secretary, National Federation of the Blind in his paper on "Rights of Persons with Disability: An Overview" gave a description of the legal protection ensured for persons with disabilities under various legislations. While narrating his personal experiences, he said that although the Act contains provisions for three percent reservations in employment many of the establishments both in the public and private sector are not implementing these provisions. Besides there is a major threat of losing jobs by these persons because of (a) privatisation of public sector, (b) retrenchment in the government sector, through voluntary retirement schemes, special voluntary retirement schemes, (c) declaration of staff as surplus and (d) in worse scenario of retrenchment and closure. He called on the government to implement the provisions of the Act. There is also lot of need for taking up an in-depth research on the implementation of the provisions of the Act by the Institutions like the ILI, he added.

## **Interventions**

**Padma Seth**, Consultant, UNICEF and former Member, National Commission for Women, felt that there is (i) lack of structural arrangement to implement the legal provisions concerning persons with disability; (ii) apathy of the bureaucracy, due to tardy understanding and appreciation

of the rights and needs of the disabled; (iii) lack of effective monitoring and implementation; (iv) no time frame provided for accessing facilities; (v) no quantified procedure for implementation of the Act; (vi) no serious effort seems to have been made for monitoring and implementation; (vii) no way to go and ensure that any local executive authority violating the rights of the disabled persons can be made accountable for violating the law. She, therefore, suggested for enactment of new legislation or making amendments to the existing legislation with a long range perspective.

**Prof. Amita Dhanda**, Registrar, NALSAR University, Hyderabad said that under the international law there are no disincentives/sanctions as such for non-compliance. The absence of disincentives or even sanctions in the Persons with Disability Act or other legislations in the national regime was the cause of major anxiety for the Amendment committee. As stated by Prof. Verma, the large part of the international regime till today still remains persuasive, it hasn't really moved towards the coercive stand point. It is still very much within the regime of soft law.

**Laxman Prasad**, first founder placement officer for the disabled people in India said that in our country many of the people including the law enforcement agencies and part of judiciary are unaware about the problems of the disabled people. He, therefore, suggested for creating awareness and to educate them so that they can understand what disabled means and what are their rights under the Constitution and other laws and also under the international law. To this end there is a need to organize similar type of seminars and workshops for their education at different levels, by inviting experts from other countries so that we can understand what is international law governing the disabled people, he added.

**Dr. Sudarshan Vaid**, Convenor, SUNIYE raised the issue of insensitivity and narrated his experiences. He quoted the examples of Ministry of Railways and few other departments in Delhi which refused to issue disability certificates to all those between the range of 60 and 89 decibel, because they were following the old Act. He said that only with the intervention of the the Commissioner the orders were finally issued.

**S.C Pant**, President Uttar Pradesh Parents' Association for Mentally Retarded Children narrated the state of affairs in Uttar Pradesh where the officials have denied to issue certificates to mentally retarded children whose IQ is fifty five to sixty. He said that even there have been cases where one could find children of twenty six years with a mental age of ten years, being denied these certificates. They say all mild mentally retarded children will not be issued any certificate at all, as if they are normal children. So very strange situation is prevailing and there is a need to take remedial measures for protecting the rights of the disabled persons.

**Cmdr. Batra** suggested that if we follow section 25 of the Disabilities Act (prevention of disability) we can definitely reduce the number of

disabled persons in the country.

**Meera Sawhney**, associated with the various special activities in India suggested that by amendment in the Act or through policy making we should introduce sign language as a part of teacher's training, across the board for the country. We should also teach the sign for the alphabet so that a lot more children who go to schools will grow up knowing what sign language is and it will make for a long-term difference.

**Vijay Kaul**, associated with Haemophilia Federation said that Haemophilia is hereditary, a child is born with it, and if he is not treated properly and timely, it ultimately leads him to disability. Therefore she suggested for taking measures for prevention and treatment of persons afflicted with the disease.