

## **Technical Session III**

### **Enforcement Mechanism and Strategies**

**Chairperson:** Mr. Virendra Dayal, Member, NHRC

**Co-chairperson:** Mr. Jerry Pinto, Advisor, UNICEF.

**Speakers :** Vandana Bedi, Dr. D.K. Menon, R. Bhama, Prof. Amita Dhanda, Surender Saini, Anuradha Mohit

**Virendra Dayal**, Member, National Human Rights Commission, in his introductory remarks clarified that when we talk about persons with disabilities, we are above all talking about human beings, with human rights. According to him, this is an essential message that we must carry in our minds and in our actions. The question of disabilities is a question of rights that are fundamental and inalienable and vest in each human being by virtue of being human. In other words all of us in a civil society regardless of work capacities have a duty to respect those rights and to further them. He referred to Amartya Sen, who in his most recent book on Developmental Freedom talks about the need to think of development in terms of the expanding opportunities so that people can fulfil these obligations.

While narrating the role of National Human Rights Commission (NHRC), he said that the it was constituted six and a half years ago. The prevailing conditions give first preference to civil and political rights, TADA and custodial violence. The Commission soon realised that there is a seamless thread that runs through a human being's life, and the life of the society. Refuting the allegation that the NHRC was throwing its net too wide, he said that the Commission is concerned with anything that affects human dignity, wherever any right is jeopardised. He added that the Commission ventured into the area of persons with mental illness. It has visited mental homes and found to its despair the situations that were made worst, and sometimes cruel beyond belief. It then requested former Director of NIMHANS to help in undertaking a study which was entitled "Quality Assurance in Mental Hospitals" and the Commission has released it last year. The study not only discusses in great detail the problems of those who are suffering from mental illness, but has made specific suggestions about how the Commission should be used to attend them and in regard to each governmental hospital in the country. In other words it is a practical guide to what needs to be done. The Commission discovered that, of course, physical disabilities or mental disabilities sometimes start

in the womb, they are related to malnutrition, iron and iodine deficiencies, absence of micro-nutrients. Sometimes we are born well, but life takes its toll, for example, our Jawans in the armed forces, go and fight and are disabled permanently, he added.

**Jerry Pinto**, Advisor, UNICEF, Co-chairperson of the session gave a brief description of the provisions concerning the protection of children with disabilities as contained under the Convention on the Rights of the Child. He said that there is a need to set a dialogue with a larger civil society-perhaps the one not disabled; they have a disability of a different kind of being insensitive to this issue. He stressed the need for taking preventive measures and focussing on children. He referred to the observations made by the Committee on the Rights of the Child constituted under the Child Rights Convention that (i) in all the reports submitted there is very poor data on disability; there is only generic reference to data but there is no research and no census and no reliable data; (ii) there is a need to eradicate discriminatory attitudes and practises that prevent children with disabilities from participating in schools and having access to other services; (iii) there is need to enact legislation and policy for the protection and empowerment of children with disabilities; (iv) education should be made accessible to the disabled children; and (v) there is a need for create whole range of support services.

**Vandana Bedi** from Spastic Society of Northern India in her presentation gave a brief description of the Rehabilitation Council of India (RCI) Act, 1992 and the functioning of the Rehabilitation Council under the Act. She raised two basic issues : (i) the conceptualisation of the Act itself; and (ii) the implementation of the Act. She said that whenever an Act is conceptualised or the idea comes about, it is in response to a need, from the society or from a particular sector. When the RCI Act was enacted, nobody knew when it was introduced in the Parliament and how it got enacted. The disability sector came to know about it after about a year and then the whole movement started. Whereas, the Persons with Disability Act advocates fully for the inclusion of the disabled people into all development aspects in the society and providing equal opportunities, full participation and protection of rights to them the RCI Act works in some ways against this concept of Persons with Disability Act. The RCI Act relates to the training of people in the field of disability, such as teachers for persons with disability, as rehabilitators, medical rehabilitators for persons with disability as vocational counsellors. The RCI Act puts disabled people into a very separate category and it will never lead to an all-inclusive society. Now if the teachers are providing education to the disabled children, it is considered that they are working against the Act, because within the Act any person who is doing any kind of work with the disabled person needs to be registered with the Council and needs to undergo training recognised by the Council. If an apex body

like the Medical Council of India (MCI) is not able to implement its objectives fully one can imagine what is going to happen to RCI, she questioned. She suggested for utilisation and improvement of the existing infrastructural facilities instead of creating a new system.

**Dr. D.K. Menon**, Director, National Institute for the Mentally Handicapped, in his paper gave a brief description of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. He said that the Trust Act has a very progressive objective, namely, to enable persons with disability to live as independently and as fully as possible within and close to the community to which they belong. The idea is not to push people out of the society and keep them in residential institutions such as what has happened in West, but to encourage them to live within their family. They have the right to live within their family, and one has to recognise diverse needs of the families to retain a person with disability within the family system, he emphasised.

He stressed the need to have a provision to take care and give protection to persons with disability in the event of the death of parents or guardian. As of today people with mental retardation either end up in Juvenile Homes in mental hospitals or in jails. These are the places where they go and this is what the State does. None of these places are appropriate where people with disability should go, he cautioned.

**R. Bhama**, Deputy Secretary, National Commission for Women, in her paper examined the 'Role of National Commission for Women in Protection and Empowerment of Women with Disabilities'. She said that in mental asylums it has been observed that a large number of women are suffering from depression. She suggested for giving some weightage to the blind women. Further, where reserved posts are not filled up such vacant posts should be circulated to the NGOs so that they can suggest candidates because many people are not even aware of the number of posts or vacancies which are available, she added.

**Prof. Amita Dhanda**, Registrar, NALSAR University presented a paper on the 'Role of Judiciary in Protection and Empowerment of Persons with Disabilities'. She said that it is important for us to have imaginative innovative lawyering, possibly the kind of meaning which starts to give substance to the provision of the Persons with Disability Act. The phrase 'within the limits of economic capacity' has been used on a constant basis in the statute. It becomes extremely significant exactly how this particular phrase should be or could be interpreted. When you have a statute, which is talking about full participation, then every phrase and clause in that statute has to be interpreted in a manner which furthers full participation and not in a manner which actually just makes so many symbolic gestures without concrete action.

**Surender Saini** in her paper highlighted the role of NGOs' in empowerment of persons with disabilities. She called for a concerted action to create awareness among various groups. She said that there may be some drawbacks in the legislations but we can always improve upon that. Even now when the census is going to be taken up, there is lack of awareness or willingness to help to find out the magnitude of the problem as to how many are the disabled people in our population. We will know the magnitude of the problem only after that. When we say there should be education, there should be employment for these persons so that they become self reliant. How many schools, how many people to be educated, and type of medical treatment should be provided for them depend on the magnitude of the problem and only then the Planning Commission will be able to make the realistic planning for them. While narrating the problems being faced by the NGOs, she made a suggestion for providing financial assistance to the NGOs' to carry forward the welfare activities for the persons with disabilities. With the help of the science and technology why should we not protect our children from catching any disability, which can be prevented, she queried.

**Anuradha Mohit**, Commissioner, Disabilities gave a brief description of the role and functioning of the office of the Commissioner, Disabilities. While appreciating the ILI's efforts and the title of the seminar, she called for creating an environment where persons with disability get a chance to overcome the impediments and to have greater participation in every aspect of life and above all choices and options must be widened, from where they stand today. Disability can inflict upon any person and at any stage of life but persons who are elderly are prone to disabilities more than persons who are young and adults in their youth life. Therefore the recognition of this fact of life should not be measured against a scale of cost effectiveness, she emphasised.

While outlining the complaint mechanism under the office of the Chief Commissioner, Disabilities, she said that during the year 2000 the office had received about five hundred and twenty nine complaints, out of which there are about fifteen complaints which are not maintainable, but on all others action was initiated and nearly three hundred and eleven cases were disposed off till the end of March 2000. While pointing to the minimal role being played by the NGOs, she said that out of five hundred and twenty nine complaints which came before us despite having about three thousand NGOs for the disabled, only twelve NGOs have filed any petition directly or on behalf of persons with disabilities. She called for a concerted action by the NGOs' and civil society at large towards the empowerment of persons with disabilities.

## **Interventions**

**Dr. D.K. Menon**, Director, National Institute for the Mentally Handicapped, Hyderabad said it is true that persons with severe disability are defined in terms of percentage which pertain more to locomotive disability, but other disabilities cannot have percentage in terms of mental retardation. He added that National Trust Act does not define severity as mental retardation, multiple disability or Cerebral Palsy or Autism.

**L.K Thakur**, Advocate, Supreme Court of India suggested that there is a need to create awareness among the masses especially law enforcement agencies. Otherwise just simply having a rule or the law made for it, which may hardly be enforced, he cautioned.

**Lakshman Prasad** said that there is lack of awareness on the part of all the members of the society, including judges, administrators, doctors, social workers. He therefore suggested that it is necessary to convince the professors, vice chancellors and most importantly chairman of UGC or chairman of the All India Council of Technical Education in this direction. Besides, this subject should be included in the National Academies such as Lal Bahadur Shastri Academy etc., because ultimately they have to face and they have to tackle and implement the legislation and various policies. Similar programmes should also be conducted for doctors, lawyers, managers of various public and private sector establishments etc.

**M.K Rastogi**, Superintendent, Vocational Rehabilitation Centre, invited the attention to the problems being faced by professionals with the Rehabilitation Council of India. According to him, those who are in the field for the last twenty to thirty years are still not been registered because they are not able to meet the rules that have framed. So he suggested that those who are in the field for specific number of years as professional and are working efficiently should be registered with the RCI without any formalities. He drew attention to the decision of Supreme Court wherein it was laid down that all the employers may not go to employment exchanges or the vocational rehabilitation centres for the handicapped. They can directly advertise these vacancies in the press. However, the persons with visual disabilities, persons with hearing disabilities would not have access to the press, and thus left out from getting the benefit of those vacancies. In the absence of this notification, there is the compulsory notification and because of this notification, the compulsory notification Act of Government of India has become redundant.

**Kishore Sharma**, of Jawaharlal Nehru University (JNU), brought to the fore problems being faced by the employees of JNU. He said that since 1978 to 2000, the University has not cared to appoint physically disabled persons as provided under the Act. There are nearly nine persons with disabilities working on daily wages and have made representations

at various levels for safeguarding their interest and no steps have been taken to protect them.

**Anuradha Mohit**, Commissioner Disabilities, after hearing to the various practical problems being faced by the persons with disabilities, which were highlighted in the session gave a brief description of the various options available for the redressal of grievances and the role being played by the office of the Commissioner, Disabilities in addressing these diverse issues.