

# National Seminar

25 February 2008 Bangladesh-China Friendship Conference Centre Agargaon, Dhaka



# Towards a New Disability Law in the Light of UN Convention on the Rights of Persons with Disabilities

Background

In Bangladesh, about ten percent i.e., one crore and 40 lacs persons with disabilities (PWDS) are deprived of having education, health care, employment and social security etc. Their interest is indeed neglected in the process of state policy.

The Constitution of Bangladesh declares certain Fundamental Rights relevant for people with disabilities, including nondiscrimination and right to protection of law. Regarding disability the 'Bangladesh Protibandhi Kalyan Ain 2001' (Bangladesh Disabled Welfare Act, 2001) failed to play any significant role to establish the rights of PWDs.

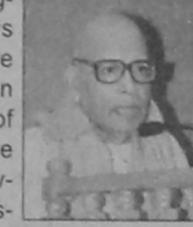
The demand for reforming the exsisting Act has become more relevant due to adoption by the United Nations of the Convention on the Rights of Persons with Disabilities (UNCRPD). The convention and its Optional Protocol were adopted by the United Nations General Assembly on 13 December 2006. and opened for signature on 30 March 2007. It aims to ensure that persons with disabilities enjoy human rights on an equal

basis with others. Bangladesh has signed and subsequently ratified the UNCRPD on 30 November 2007, and on process to sign the Optional Protocol by 1st week of March in this year. There is now an urgent need to rethink the legal and policy issues in the light of the UNCRPD.

From these compulsions, the national seminar was organized by Action on Disability and Development (ADD) at Bangladesh-China Friendship Conference Center on February 25, 2008. The seminar was divided into two sessions i.e. first was on 'UNCRPD and its Implications, for Developing Nations' and the second one 'Rethinking Protibandhi Kallayan Ain-2001 in the light of UNCRPD'. Eminent economist and educationalist Professor Muzaffer Ahmad and Brig Gen (Rtd.) Abdul Malek, Special Assistant to the Chief Adviser attended as the chief guests in the 1st and 2nd sessions respectively. The designated personalities from national and international level, law specialists, academicians, representatives from NGOs, members of DPOs, media and other bodies attended the

## Professor Muzaffer Ahmad Chairman, Board of Trustees, TIB

I think, the fig-PWDs more than 14 million if all sorts of disabilities are included. Pov-



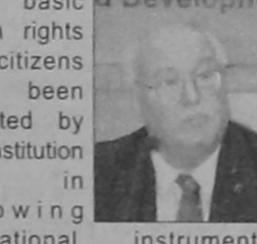
It is true that ability are very interrelated. Discurrent ability might also be caused from Act is not begenetic factors but there is no ing enforced adequate research. PWDs are properly due neglected in society from getting to some looptheir minimum rights, even within holes and the family. shortcomings.

Yes, legal support is necessary for protecting the rights of PWDs but it is also important to sensitize the private sector for offering opportunities for the development of PWDs side by Government with mechanism. In a free market economy, there lies market discrimination for disabled people and in fact, it emanates the concept of welfare.

So we should drive against this market discrimination to establishing the rights of PWDs. There are lots of issues influencing disabilities, such as wars and conflicts causing many disabilities. So, we should stand against war, discrimination, and inequality for ensuring the rights of PWDs. Not charity, but on the basis of equality, we should work for the better life of PWDs.

## H.E. Dr. Stefan Frowein Ambassador, Head of Delegation, European Commission

human rights citizens been protected by its constitution following



International instruments. Although the passing of the Disability Welfare Act 2001 itself is recognized as a milestone, its implementation has been poor and parts of the Act remain in To get all facilities in society equalconflict with existing legislation especially as regard education and employment.

Bangladesh has taken a decisive step by signing the UN Conven-

Chairman, Department of Law, Chittagong University

Dr. Abdullah Al Faruque

obligation.

## tion and in doing that, the government has committed itself not only to enact laws and other measures to improve disability rights but also to update or get

rid of inadequate legislation, cus-

Secretary, Ministry of Social Welfare

If we do not get adequate sup-

port from the political govern-

ment, we could not do enough.

This is the reality. This govern-

ment did a lot for disabilities.

About Tk 100 crore is allocated

in the budget for the develop-

any priority for PWDs though

to the government to make the

nity for PWDs. Articles 1 says, the

convention expresses explicit pur-

pose to promote the fundamental

freedom and inherent dignity of the

In fact, the present barriers against

development are that all people do

not participate in the movement.

ly is the fundamental right to the

persons with disabilities. Article 4

(CRPD) says, the state party

should take necessary measures

ensuring the economic and social

persons with disabilities.

This is indeed important.

development of PWDs.

The Act of 2001 has major deficiencies in

terms of lack of accountability, lack of

representation in the Committees, immunity

from suit, scope of authorities to exercise

arbitrary and undue power, and lack of

permanent institutional mechanism. This Act

lacks accountability for non-compliance with

law by government employees, offences for

violation of disability law is not well defined, absence of rules, and

contains schedule where there is no legal obligation upon the

From the above pitfalls it suggests that a mere amendment of the

existing Disability Welfare Act will not be enough for injecting

right based approach into law. As the Act is not consistent with

standards set out by the Convention and other international

instruments on disability rights, new enactment becomes

imperative for bringing disability law in conformity with

A new legislation combining both right-based and welfare can

make a significant contribution for the promotion and protection of

human rights of PWDs and facilitate their full participation and

inclusion in all mainstream social, political, economic and cultural

programmes. Enactment of new law in the light of convention

becomes imperative for the Government to fulfill its international

government to carry out the welfare program incorporated.

international standards set out in the Convention.

process quickiest and prompt.

Fr. R W Timm, C.S.C

CRPD

**Human Rights Activist** 

As the author

has expressive

value as it sig-

nals global

communities

recognition in

favor of equal

rights and dig-

ment of PWDs.

tom and practices.

M.A. Hye Howlader

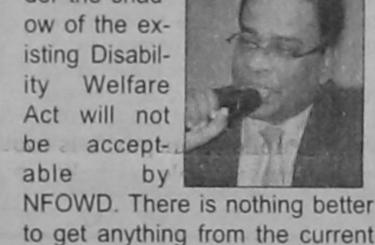
citizen's The



and special steps for the marginalized. We should create a discrimination free society by using the proper law. Only creating a new law should not be our ultimate target, rather we should go for establishing the rights of the

## Khandakar Jahurul Alam President, NFOWD

Any law under the shadow of the existing Disabil-It is difficult to implement the law, ity Welfare as we cannot fulfill the demands of PWDs. There are lots of job be acceptadvertisements not mentioning able

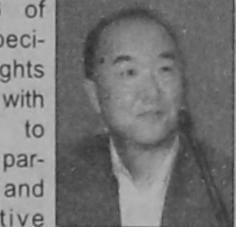


there is a rule reserving 10% to get anything from the current quota for PWDs in 3rd and 4th law. UNCRPD comes with the class Government employment. thrust for adopting a new law for I think, you have to create states who are signing as Banpressure from grassroots levels gladesh has already done. The time has come to move the

drafting of discrimination free laws soon. Now we should go for deeper levels of disability issues, we should talk, share, and sit with the PWDs to understand the real problems for adopting a new

## Professor Nagase Osamu Inclusion International, University of Tokyo

Article 23 of CRPD, specifies the rights of persons with disabilities to family life, parenthood and reproductive



## Barrister Sara Hossain Supreme Court Bar

Our constitution, it depicts clearly that, the state can not discriminate againest



state can also take necessary



rights, but these are not being practiced in a number of countries including Japan. It is important to provide information and personal support services to persons with intellectual disabilities. This legislation in the light of UNCRPD is important to establish the rights of PWDs.

## Key findings

- The UNCRPD will become the first human rights treaty of the twenty-first century, as well as the first legally enforceable United Nations instrument specifically directed for the rights of six hundred and fifty million individuals with disabilities worldwide.
- · The UNCRPD has three salient features as expressive value, states parties initiative in formulation legal policies and social integration. States have to take measures adopting policies and laws to change the lives of PWDs
- The existing disability law titled 'Disability Welfare Act-2001' is indeed ineffective to promote the rights of PWDs.
- · New disability law should be formed in the light of CRPD-2006 replacing the existing law. As a signatory of CRPD, it is obligatory for Bangladesh to adopt the new law regarding disability with consultation of lawyers and others concerned working with disabilities, complying the regulations of UN Conventions.
- · Formulation of law is not enough, it needs to be enforced effectively for changing the backward life of PWDs.

Michael Stein, Professor

persons with disabilities.

Law School, Harvard University

The UNCRPD contains legal

obligations that can be applied to

The Convention possesses the

most immediate impact in three

areas i.e. firstly, expressive

is an

which

value,

acknowledgement by the global community of the

equal dignity, autonomy, and worth of people with

disabilities. Although persons with disabilities

technically possessed these rights under existing

UN instruments, they were neither recognized nor

asserted in practice. Adoption, and early ratification,

of the UNCRPD sends a signal to the international

community that it recognizes the place of disability

within the human rights canon. Secondly, UNCRPD

forces States Parties to actively engage with

Most nations do not have disability rights laws, and

will thus be required to consider or rethink legal and

social policies towards disability. This is particularly

true as far as balancing anti-discrimination

prohibitions with equality measures, resolving

unclear interpretations of disability-related principles

(e.g., reasonable accommodations and access to

justice), and grappling with rights that were implicit

but not previously endorsed, such as a right to

- . It is a constitutional responsibility of states to ensure equal rights to all and take necessary measures for developing of PWDs.
- . The statute should be about disability and not about disabled persons · The new law should be drafted through sharing
- concerns from grassroots level as they are the most affected and marginalized portion. Not only Government, private sector, NGOs and others concerned should come forward to take
- Disability is not an issue of charity rather a development issue

initiative upholding the development process of

- Disability should not be treated as welfare approach rather as a serious concern of rightbased approach. · Mindset should be changed favoring the rights of
- The rights of PWDs could be ensured with all
- people's participation with the feelings of human

Thirdly, CRPD will facilitate social integration by persons with disabilities through its mandate of inclusive development. Current development practices have by and large excluded disabled communities, thereby increasing the equity gap between disabled and non-disabled populations. State engagement with its own domestic-level

disability laws and policies will necessarily manifest on at least three interrelated levels. To begin with, each State must decide whether it will ratify the CRPD, and then adjust its own national level schemes (including the designation of focal points for monitoring and implementation) accordingly; fine-tune its national framework and then ratify; or adopt some transitional measures. Next, each State must assess its individual socio-legal circumstances and determine how to most expediently balance anti discrimination prohibitions with equality measures. Last, each State must resolve unsettled interpretations of existing disability-related principles (for instance, access to justice) and also grapple with Convention rights not previously endorsed in domestic law.

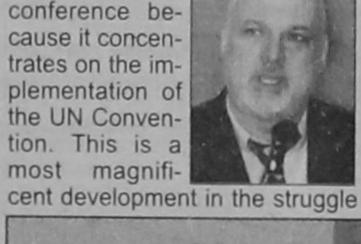
Bangladesh ratified the UNCRPD on 30th November 2007 and is currently moving towards revising the Act 2001. This is a unique opportunity for the development of laws and policies in Bangladesh that can empower its citizens with disabilities, and a golden chance for signaling a new and deep commitment to its target minority group.

# Mark Harrison

East Anglia University, UK

disability law and policy.

It is an extremeimportant conference because it concentrates on the implementation of the UN Convention. This is a most magnifi-



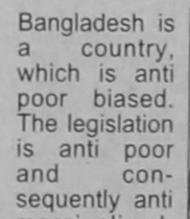
for human rights for disabled people in their long journey of disability rights movement to establish equality, as equal citizens to live alongside everybody else. Through ratifying the Convention, the Bangladeshi politicians, legislators, policy makers are to really grasp what human rights mean in implementation. It is an enormous step and challenging to way forward.

Umme Kulsum Ranjona President, National Council of Disabled

It is true that we got the Act 2001 through a movement. But only for the sake of law, it does not have







Welfare Act 2001 emphasizes charity and the title of this law is also faulty and unacceptable. The Act 2001 is no longer satisfactory and we have to review, revisit, and re-examine the document as soon as possible. We must compel the state to take necessary steps, otherwise nothing is going to change.

### Brig Gen Abdul Malek (Retd) Special Assistant to the Chief Adviser

To implement the Disability Act is our constitutional responsibility. The country's constitutional law is equal for all as well as for PWDs as the citizen of the country. So why a separate law is mandatory for the PWDs? I think, adopting a separate law for them is also a discrimination.

Furthermore, it is required according to the Convention so that the greater interest of the PWDs is protected. It is our duty to protect their rights, it is not the question of feeling pity for them. We have to organize a social movement to uphold their constitutional right. It is the duty of the government to rehabilitate them. On our part the caretaker government will try our best to provide strong support to them.

As develop-

ment partners

we have to be

very careful

the states role

sharply for im-

plementation |

monitor

any meaning to exist. To bring out Ms. Farah Kabir the disabled people into the Country Director, Action Aid Bangladesh development process, we need a new law covering the aspects of CRPD.

## Justice Gholam Rabbani

The Act under scrutiny was drafted alone by the Ministry of Law and thus resulted even on a



ment for formulation of a new cursory reading, its feasibility becomes much below the expectations of the Convention. Act or more Acts are necessary whose purpose would be to help the handicapped adjust to the community as much as possible at equal level as social participants and wage earners. There must be specialized persons and for that purpose training institutions would be necessary for those cadres. The work of drafting should be done by a panel of experts-jurists, educators, psychologists, psychiatrists, doctors

## Iqbal Sobhan Chowdhury Editor, The Daily Observer

The definition PWDs should not be based charitable views, rather should be on right based

and the like.

approach. Whether the society is civilized or not depends how it deals with women, children and President, National Grassroots disabled. So we should change Disabled Organization (NGDO) our mindset as the PWDs have all rights to get dignity, freedom and participation. Media has also proactive role to promote the rights of PWDs and sensitize the community favoring the rights of PWDs and advocating for a new

## Prof. Dr. Mizanur Rahman Faculty of Law, University of Dhaka

marginalized. The Disability



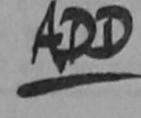
formation of a Working/ Consultative Group having represenation from different

draft law and place it before the policy makers.

# Steps, which should be taken on an urgent

(Dr. Fakhruddin Ahmed, Chief Adviser, People's Republic of Bangladesh, mentioned at his speech at 3rd General Assembly and Conference of The Asia Pacific Disability Forum at Bangladesh-China Friendship Conference Center on February 27,



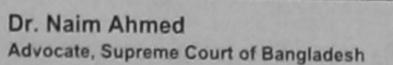


basis including revision of the Government Rules of Business for catering to the needs of disabled persons and amendment of the Disability Welfare Act in accordance with the provisions of UN Convention of Rights of Persons with Disabilities.... I would like to urge

2008.)



the legal experts, policy-makers, development practitioners and disability activists to initiate the process of consultations with stake-holders on these issues. 33





The Act 2001 took active efforts of more than a decade to get promulgated. After this was achieved, it is now almost eight years since the workers and activists are trying to bring a change making that law more relevant. After the ratification by Bangladesh of the UNCRPD, however, this effort has become more significant. The government is responsive and now it must proceed to revise the Act 2001.

There is an overwhelming accord that the law should abandon the 'Welfare' approach in favor of a 'Right Based approach. The first outcome of this idea is that the short title of the act itself should be changed. The statute should be about disability and not about disabled persons. Since the present definition is seen as purely clinical or descriptive, suggestions have been made to replace it with a wider definition connecting disability with its social context.

There are several important issues on compliance procedures and implementation on which no agreement could be reached. A close study of the Act 2001 however shows that more than one rule is required. For different aspects and different issues, separate and effective rules are

The non-governmental sector may further assist the government by getting together and working on a model draft. Mutual cooperation can help avoid the pitfalls and shortcomings so common in laws prepared from a single perspective.

## Country Director, ADD

Mosharraf Hossain

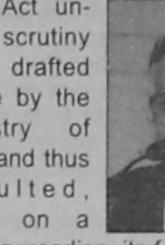


Not only mindset and feelings can change the conditions of PWDs to bring out them into the mainstream, but it needs states law, convention, policy for establishing the rights of the persons with disabilities. Time has come now to draft a new law in the light of CRPD in a bid to fulfilling the rights of PWDs. Of course, Government has to take these initiatives as it can only

perpetuate the rights with sustaining accountability. If Government takes the initiatives it could be done in quickest way.

If we all try with sustained efforts, it will not be difficult to draft a new law. We need now close cooperation locally and internationally to ensure rights of PWDs.

I request the honorable chief guest to take necessary steps by your Ministry for forming a committee on adopting the new law with the lawyers, working organizations with disabilities, Govt. officials and other related concerns. if this is done, we will submit a draft of this new law at the earliest. If this Government can conduct this great work by adopting a new law within this short period, it will be a memorable task for uplifting the rights and dignity of one crore and forty lacs persons with disabilities.





law under the guidance of CRPD. The convention unfolds for protecting the values and dignity of human beings. It is not enough to have legislation rather we should change our attitudes and mindset honoring individual dignity and determination. Dr. Shirin S Chowdhury

of the law in the light of CRPD.

Now we need to have proper

plan to influence the Govern-

## Advocate, Supreme Court Bar Welfare app-

roach should transformed right-based approach which could set the stan-

dards to meeting the rights to PWDs. In fact, our Constitution ensures equal rights to all; nevertheless, a different law is necessary for establishing the equality and discrimination free society. Not only rights rather protec-

ensure the betterment to PWDs. Aktar Hossain

tion, promotion, guarantee and

enforcement are necessary to

From 1995, the Disabled Peoples Organiza-

have tions been re enforcing the disability movement to establish

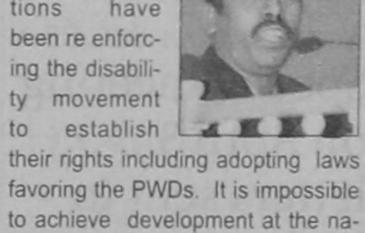
tional level without inclusion of

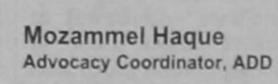
PWDs in the mainstream. The new

law should be drafted through shar-

ing concerns and from grassroots

level as they are the most affected.





The new Act F prepare the

