

## National Seminar

25 February 2008

Bangladesh-China Friendship Conference Centre  
Agargaon, DhakaTowards 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 non-discrimination 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 existing Act has become more relevant due to adoption by the United Nations of the Convention on the Rights of Persons with Disabilities (UNCPRD). 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 UNCPRD 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 UNCPRD.

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 'UNCPRD and its Implications for Developing Nations' and the second one 'Rethinking Protibandhi Kalyan Ain-2001 in the light of UNCPRD'. Eminent economist and educationalist Professor Muzaffer Ahmad and Brig Gen (Retd.) 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 seminar.

Professor Muzaffer Ahmad  
Chairman, Board of Trustees, TIB

I think, the figure of PWDs will be more than 14 million if all sorts of disabilities are included. Poverty and disability are very interrelated. Disability might also be caused from genetic factors but there is no adequate research. PWDs are neglected in society from getting their minimum rights, even within the family.

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 side with Government 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

The basic human rights of citizens have been protected by its constitution and in 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 conflict with existing legislation especially as regard education and employment.

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

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, custom and practices.

## M.A. Hye Howlader

Secretary, Ministry of Social Welfare

It is true that the current Act is not being enforced properly due to some loopholes and shortcomings. If we do not get adequate support from the political government, we could not do enough. This is the reality. This government did a lot for disabilities. About Tk 100 crore is allocated in the budget for the development of PWDs.

It is difficult to implement the law, as we cannot fulfill the demands of PWDs. There are lots of job advertisements not mentioning any priority for PWDs though there is a rule reserving 10% quota for PWDs in 3rd and 4th class Government employment. I think, you have to create pressure from grassroots levels to the government to make the process quickest and prompt.

## Fr. R W Timm, C.S.C

Human Rights Activist

As the author says, CRPD has expressive value as it signals global communities recognition in favor of equal rights and dignity for PWDs. Articles 1 says, the convention expresses explicit purpose to promote the fundamental freedom and inherent dignity of the persons with disabilities.

In fact, the present barriers against development are that all people do not participate in the movement. This is indeed important.

To get all facilities in society equally 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 development of PWDs.

## Barrister Sara Hossain

Supreme Court Bar

Our constitution, it depicts clearly that, the state can not discriminate against its citizen's rights. The state can also take necessary 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 PWDs.

## Khandakar Jahurul Alam

President, NFOWD

Any law under the shadow of the existing Disability Welfare Act will not be acceptable by NFOWD. There is nothing better to get anything from the current law. UNCPRD comes with the thrust for adopting a new law for states who are signing as Bangladesh 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 law.

## 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 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 UNCPRD is important to establish the rights of PWDs.



## Key findings

- The UNCPRD 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 UNCPRD 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.
- 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 initiative upholding the development process of PWDs.
- Disability is not an issue of charity rather a development issue.
- Disability should not be treated as welfare approach rather as a serious concern of right-based approach.
- Mindset should be changed favoring the rights of PWDs.
- The rights of PWDs could be ensured with all people's participation with the feelings of human dignity.



## Michael Stein, Professor

Law School, Harvard University

The UNCPRD contains legal obligations that can be applied to persons with disabilities.

The Convention possesses the most immediate impact in three areas i.e. firstly, expressive value, which is an 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 UNCPRD sends a signal to the international community that it recognizes the place of disability within the human rights canon. Secondly, UNCPRD forces States Parties to actively engage with disability law and policy.

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 mobility.

## Mark Harrison

East Anglia University, UK

It is an extremely important conference because it concentrates on the implementation of the UN Convention. This is a most magnificent development in the struggle

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 Women (NCDW)

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

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.



any meaning to exist. To bring out the disabled people into the 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 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 and the like.



Iqbal Sobhan Chowdhury  
Editor, The Daily Observer

The definition of PWDs should not be based on charitable views, rather should be on right based approach. Whether the society is civilized or not depends how it deals with women, children and disabled. So we should change 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 law.



## Iqbal Sobhan Chowdhury

Editor, The Daily Observer

From 1995, the Disabled Peoples Organizations have been re-enforcing the disability movement to establish their rights including adopting laws favoring the PWDs. It is impossible to achieve development at the national level without inclusion of PWDs in the mainstream. The new law should be drafted through sharing concerns and from grassroots level as they are the most affected.

## Prof. Dr. Mizanur Rahman

Faculty of Law, University of Dhaka

Bangladesh is a country, which is anti poor biased. The legislation is anti poor and consequently anti marginalized. The Disability 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.



## Ms. Farah Kabir

Country Director, Action Aid Bangladesh

As development partners we have to be very careful and monitor the states role sharply for implementation of the law in the light of CRPD. Now we need to have proper plan to influence the Government for formulation of a new 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

Advocate, Supreme Court Bar

Welfare approach should be transformed to right-based approach, which could set the standards 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 protection, promotion, guarantee and enforcement are necessary to ensure the betterment to PWDs.



## Aktor Hossain

President, National Grassroots Disabled Organization (NGDO)

From 1995, the Disabled Peoples Organizations have been re-enforcing the disability movement to establish their rights including adopting laws favoring the PWDs. It is impossible to achieve development at the national level without inclusion of PWDs in the mainstream. The new law should be drafted through sharing concerns and from grassroots level as they are the most affected.



## Mozammel Haque

Advocacy Coordinator, ADD

The new Act needs formation of a Working/Consultative Group having representation from different sectors to prepare the draft law and place it before the policy makers.



## Dr. Abdullah Al Faruque

Chairman, Department of Law, Chittagong University

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 government to carry out the welfare program incorporated.

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 international standards set out in the Convention.

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 obligation.

## Dr. Naim Ahmed

Advocate, Supreme Court of Bangladesh

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 UNCPRD, 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 suggested.

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.

## Mosharraf Hossain

Country Director, ADD

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.



"Steps, which should be taken on an urgent 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 the legal experts, policy-makers, development practitioners and disability activists to initiate the process of consultations with stakeholders on these issues."

(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, 2008.)

