

UN-Convention of Rights of Persons with Disabilities 2006: A Thematic Review

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Abstract

The protection of rights is always part of human legislations. Cultural assertion and accommodation of differences is indispensable subject of discourses globally. The tangible value of legislations and potential value of discourses have led to the development of humanitarian norms and its protection. In that regard, Universal Declaration of Human Rights (1948) was first and systematic attempt to make human values universal. With aim to protect the human rights/values, International Covenant on Civil and Political Rights 1966, Convention on Rights of Child 1989 were instituted. From the entire discourse and legislations, Persons with Disabilities and their issues were absent. With holy aim to recognize them and their concerns, United Nations has concluded several declarations exclusively. Despite having more than dozen declarations, resolutions and programmes, the rights of People with Disabilities could not get formalised. Consequently, the United Nations adopted 'Inclusive Approach' in the last decade of 20th century with sole objective to ensure the rights of disabled extensively. As a result, Convention on Rights of Persons with Disabilities was passed separately by the UN's General Assembly on December 13 2006. The fundamental motive of this exclusive convention was two-folds. a. to make all the conventions equally applicable for Individuals with Disabilities and b. shift from exclusive approach to inclusive approach. Thus this paper has objective to re-introduce the themes of convention and make forth coming legislations inclusive.

Key Words

Disability, Culture, differences, Legislations, Rights, inclusive approach

Introduction

The United Nations [UN] is an intergovernmental organization with recommendatory power. It does believe in the sovereign equality of member states and encourages them to come on a single platform to coordinate on certain global concerns such as health, environment and security. On the question of disability, the UN has produced several declarations on disabled people to ensure their rights, equality in the society, fuller citizenship rights and proper health access to overcome their barriers. The UN-DMRP 1971, UN-DRPD 1975, UN-ICIDH 1980, UN-IYDP 1981, UN-World Programmed of Action 1982 followed by Disability Decade from 1983 to 1992, Salamanca Declaration 1994 and UN-ICF2001. In the decisive year of 2006, UN-General Assembly planned for a exclusive Convention on Rights of Persons with Disabilities. Whose main objective was to recognize all human rights treaties equally and make them applicable in case of disabled people? The analysts argue that the CRPD 2006 was not a separate human rights treaty. It was the first comprehensive treaty which has recognized all the existing human rights conventions equally in the case of People with Disabilities. The sole aim of the 2006 convention was to ensure the implementation of all the existing human rights treaties such as Universal Declaration of Human Rights UDHR 1948, International Covenant on Civil and Political Rights ICCPR 1966, International Covenant on Economic, Social and Cultural Rights ICESCR 1966, Convention on the rights of the Children CRC 1989 and so on. Therefore, the sole objective of this paper is to thematically re-introduce the CRPD 2006 and make subsequent conventions aware about the rights of Persons with Disabilities.

CRPD and its Guiding Principles

The CRPD is the first human rights treaty of the 21st century. It has the distinction to be recognized as a first mandatory international instrument for all the ratified member states (Fraser Butlin, 2011; Kothari, 2012; Mladenov, 2013, p. 72). Article 44 of the present Convention declared that all the signatory and ratified states' parties are bound to follow the UNCRPD 2007 norms in their domestic civil legislations (UN-CRPD, 2006 Article: 44).

This treaty has been developed on the principle of rights rather than the idea of welfare. Ambassador MacKay, Chairman of the Ad hoc Committee, who was responsible for developing the UNCRPD characterized this human rights treaty as “embodying a ‘paradigm shift’ away from a social welfare response to disability, to a rights-based approach” (Quoted from Kayess & French, 2008, p. 3). The Commissioner for Human Rights defined the CRPD’s text as a ‘paradigm shift’ in its attitude (Kayess & French, 2008). Further, the Commissioner wrote that this convention rejected the idea of charity, objectification of disabled people and turned down the social welfare including the medical treatment as a normalizing vision of disabled bodies. According to him, the convention has given them the status of full citizenship of a political community, transformed them from pitiable people to claimant citizens of their respective countries (Kothari, 2010). Subsequently the disability research scholars have argued that primarily the popular social model of disability has influenced the UNCRPD’s standard and push forward towards a radical social constructionist view of disability, where ‘Disability’ is regarded as a direct consequence of external tangible barriers (Anastasiou & Kauffman, 2013; Bagchi, 2009; Beckett & Campbell, 2015; Shakespeare, 2008).

Defining Disability and CRPD

Historically, the conceptualization of ‘disability’ has trailed a zigzag path. The International Classification of Impairment Disability and Handicap [ICIDH] 1980 defines in purely clinical terms. The World Programme of Action 1982 considers ‘disability’ as a social oppression, the International Classification of Functioning Disability and Health [ICF] 2001 sights disability in both clinical and social. Convention on Rights of Persons with Disabilities (2006) has recognised “disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others” (UN-CRPD, 2006). As Jamaican senator Floyd Emerson Morris pointed out, the conventional approach toward ‘disability’ can be characterised most appropriately in terms of attitudes and social external barriers which might be a more effective factor for realising, exercising and gaining access to social, cultural and other available facilities like roads, transport, education, community information services, and so on (UN, 2007: 13). The convention considers a

disabled person as one who has “long-term physical, mental, intellectual or sensory impairments” (Harpur & Loudoun, 2011, p. 12; Kayess & French, 2008; UN-CRPD, 2006). Article 2 of the convention is exclusively devoted to an exhaustive description of disability and the same has noted down an extensive list of barriers; it attempts to regulate these barriers in terms of need and to fill up the gap between people with impairment and people without impairment in terms of the way in which they experience the world. Very frequently it has written down all the possible means that cause deprivation for PWDs. The convention has argued that all the languages and display of text must be in accessible formats such as Braille, tactile communication, audio description, large prints, colour contrast text, for people with ocular impairment; and sign language, Pictorial Description of Roots, for deaf and hearing disabled community (CRPD, 2006, article 2). Briefly the convention sets out the social and medical combination to determine the status of disability.

Reasonable Accommodation and CRPD mandate

Article 1 of the CRPD declares, Convention is fully committed to promote, protect, and ensure full and equal human rights for all PWDs (Ghai, 2019; Kayess & French, 2008; Kothari, 2012) Article 2 outlines, any form of discrimination based upon disability would be a violation of Disability rights. Further CRPD text explains, PWDs have an equal right to participate in social activities, cultural celebrations, economic and community-based functions without any discrimination and prejudices. The scholarship argued, Article 1 of UNCRPD clearly marked a shift from medical model of disability to social understanding of disability (Clifford, 2011, p. 12; Harpur, 2012, p. 3). Further they exemplified social inaccessible physical barriers which are not adaptive in its nature and disqualify to accommodate the need associated with PWDs. Thus, convention firmly believes that there is a essential need to sensitise the system and the peers to make accessible all the available infrastructure such as information, web services, transport, educational institutes, public offices etc.

In order to achieve these aforementioned objectives the Convention developed a landmark idea which is famously known as ‘Reasonable Accommodation’ to serve the actual purpose of the UN Charter’s vision of inherent human rights

and equality (UN Charter, 1945). For that matter, article 2 of CRPD 2006 requires 'necessary' and 'appropriate' modification and adjustments in the existing laws, structures, arrangements, practices, traditions and way of treatment. Convention also demands for 'Universal Design' to ensure greater access to public facilities like transport (WB and WHO, 2011) and equal distribution of the system's benefits. idea of universal design would not exclude 'special assistive devices' from its universal construction and modification (CRPD, 2006, article 2, (Clifford, 2011, p. 14). In 2007, the UN published a report titled 'The Realisation of Rights of the Disabled from Exclusion to Inclusion' which has argued that the failure to make proper 'reasonable accommodation' would be treated as discrimination on grounds of disability (UN, 2007:60).

General Principle and Disability legislations

The Convention has listed certain principles that form the ground for the entire Convention including the national legislation. It outlines eight different principles as a mandatory guideline for the disability standards at both national and international level. A) Respect for inherent human rights, individual autonomy and freedom of choice. B) Non-discrimination. C) Fuller participation and equal inclusion in the society. D) Respect for differences, acceptance of persons with disabilities as an integral part of human diversity and humanity. E) Equal opportunity. F) Accessibility. G) Equality between men and women. H) Respect for 'involving capacity' of children with disabilities and proper space for preservation of their distinct identity (CRPD, 2006, EHRC, 2007: 8, UN, 2007: 14-15). After providing a comprehensive strategy, the CRPD came up with general guidelines for all the signatories.

Proposing General Obligations for Disability Assertion

According to Article 4 of the Convention, all the signatories are instructed to comply with certain mandatory obligations to meet the objective of the present Convention. It explicitly mentioned that the all the states parties would create an environment where all the people with disabilities could enjoy their rights on equal terms with their peers. According to Article 4, the States should take certain measures for instance: A: legislative and administrative measures to

full implementation of all the rights which are recognised by the UN Convention; B: abolish and modify existing laws, traditions, practices that constitute discrimination against the disabled people (The Hindu, 2014, February 10 Access Date: 27/06/2015) C: States should refrain from engaging in any activities that do not conform to the Convention's standard; D: the State would be responsible if discrimination took place within its jurisdictions (EHRC, 2007: 8); E: all the ratified states shall promote research on disability, encourage the universal design of services and goods, and the State's authority would facilitate provision of assistive devices at affordable cost for all types of disability with the aim of greater inclusion, equality and participation at equal cost; F: the State would train the staff working in the field of disability; G: in order to formulate policy, particularly concerning people with a disability, it is mandatory for all the signatories to ensure representation of the disabled and active participation of children with disabilities through their organisations (CRPD, 2007, article: 4: 7; UN, 2007: 15). According to UN Report 2007 the inclusion and participation are aimed to make disabled persons active citizens in their respective political boundary of states (Kanter, 2006, 2014; Kothari, 2010). The people with disabilities should have access to proper information, for example, during voting, a blind person could get all the voting material in Braille, the speech impaired people must be able to get sign language described paper with sign language interpreter, access to services such as provision of ramps at the voting booth, assistance during voting, equal citizenship rights in order to enjoy their culture, family celebrations on equal term (UN, 2007:16-17(Mehrotra, 2013)). This provision legitimises the slogan of international disability movement 'Nothing about us, without us' (Mercer, 2001; Boyce et al. 2001, Moriarity and Dew, 2011:684, Charlton, 2002). Article 4:3 explicitly argued for active participation of children with various types of disabilities through their organisational representation in all the policy formulation pertaining to their interests (UN enable 2010, Article 4:3). CRPD 2006 demands for state intervention in order to develop inclusive environment where the children with disabilities can participate (Moriarity and Dew, 2011:688(Kett, Lang, & Trani, 2009, p. 652).

The Principle of Equality and Non-discrimination

Under the ambit of CRPD 2006, the ratified members shall essentially recognise the key equality principle to fulfill the spirit of non-discrimination. As Raymond

Lang wrote, the UNCRPD is based on the principle of "non-discrimination" where the people with disabilities have adequate legal protection against systemic oppression and customary marginalisation (Lang, 2009, p. 273) Furthermore, he describes, the binding Convention ensures right to choose lifestyle in his/her personal domain, equality of opportunity in public affairs, equal residential right in their respective community for assuring the autonomy of individual with disability (Lang, Kett, Groce, & Trani, 2011, pp. 207-211). In the opinion of CRPD 2006, the states are the prominent authority to ensure that people with disabilities are equal citizens before law of the land and have an equal share benefits (Bartlett, 2009, p. 496) and equal authority to get fair treatment without any prejudices (EHRC, 2007, 9; UN, 2007, 14). Article 6 deals specifically with women with disability and imposes duties on member states to take appropriate measures to protect disabled women (UN-CRPD, 2006). Expanding the horizon of protection, Article 7 of CRPD recognised the rights of children with disabilities. Referring the Convention on the Rights of Children (UN-CRC) 1989 and issued mandatory guideline to the signed and ratified member states to take all appropriate measures to ensure children's rights and serve their best interest (UNICEF, 2007; CRPD, 2006: article: 7: 7).

The Question of Accessibility and CRPD Instruction

The issue of 'Accessibility' is a prime concern of UNCRPD 2006. Convention includes fields such as education, transport, public social services, community-based activities, local administration, banking facilities, school system, independent living, information, internet, upcoming technology, employment, medical facilities like hospitals, clinics, workplaces including physical accessibility (CRPD, 2006, article: 9, 8; EHRC, 2007, 14). The UN in its 2007 report mentioned that CRPD 2006 has generalised physical accessibility to all: it is not only the disabled people who need accessible roads, buildings, footpath, dropped kerbs and removal of obstacles that hinders the free flowing of movement including pedestrian trafficking (Kanter Arlene, 2014). This Convention insisted that all the signatories make sure that their subsequent legislations, constructions, must be in the line with UNCRPD norms of accessibility (Perlin, 2012; Sherlaw & Hudebine, 2015; Smitha, 2015). Towards this end, the Convention has instructed states to employ strict monitoring services to avoid malpractices in the functioning of accessible systems.

Article 13 specifically argues that the people with disabilities are equally entitled to access the judicial system of their respective country (UN-CRPD, 2006). Towards this end, the state is responsible to provide training to the allied staff who are working in this field including lawyers, the police and other associated staffs (Kanter, 2014; MacKay, 2006; Weller, 2012).

Assuring Fundamental Rights and Disabled Individuals

The Convention recognised all the human rights as being applicable equally in the case of people with disabilities (Arnardóttir & Quinn, 2009). Article 10 explicitly instructed the state parties to create a harmonious environment through introduction of legal measures, implementing international rules and regulations. Conforming to the Convention's standard guidelines for persons with disabilities, including women and children with disabilities to exercise their independent lifestyle (CRPD, 2007: Article: 10 and 16: 10, 12)(UN-CRPD, 2006). Even, in situation of arms conflict or natural disaster, the respective state would be the final responsible authority to protect them, provide necessary safeguards and facilitate them in exercising their fundamental rights, such as liberty, freedom of opinion, personal mobility, etc. (CRPD, Article: 14: 11, article:21: 14-15). Further, Article 14 writes that the depriving explanation with regard to disabled people or curtailing justification are not acceptable and Article 22 openly provides legal guarantee against illegal detention and provides legal remedies at the judicial level to get justice (CRPD, 2007: article: 22, 15). Further, this particular provision guarantees 'rights to marry, freedom of having children, right to choose the number of children and the gap between them, and other family related freedoms (EHRC, 2007, CRPD, 2007: article: 23: 15-16). Article 13 provides for the disabled persons fuller financial guarantee, banking access and access to other economic activities to realise economic independence (CRPD 2006, article: 13: 11).

Article 15 adds a newer layer of human security to ensure that the people with disabilities (PWD) are not subjected to inhuman, cruel, degrading treatment, mental torture and physical exploitation (CRPD, 2007: article: 15: 12, Kannabiran, 2014, The Hindu, 2014, may 20, Access date, 29 June, 2015) . Further, CRPD 2006 explains that the PWD cannot be subject to 'forced medical treatment' and

'medical experimentation' without freely obtained consent (CRPD, 2007: 12, (Mladenov, 2013, pp. 74-78).

Article 17 of the Convention emphasised the acceptance of difference and respect for the integrity of the disabled community on equal bases (Kannabiran, 2014 The Hindu, 2014, May 20, Access on 29 June 2015) and Article 18 exclusively talks about the question of nationality and free movement in terms of obtaining a nationality and resigning from a nationality. Thus, this Article ensures the right to choose residence (CRPD, 2007: article: 18: 13). Further, it instructs states to ensure immediate registration of the birth of a child with disability and state parties would ensure the child the right to acquire 'name', 'nationality' and the right to get 'care' from his or her respective family (CRPD 2006, 13).

With the aim to create a fully inclusive society, Article 19 provides that the nodal agencies like state would be accountable for creation of 'inclusive society' by ensuring accessible community-based services (Bartlett, 2009, p. 497), community celebrations and other aspects of life (UN-CRPD, 2006). while Article 20 came up with broad guidelines for physical accessibility, inclusive social and political, administrative arrangements at the local level (CRPD, 2006 article 20, 14). Peter Bartlett (2009) writes that the main aim of the 20th Article of UNCRPD 2007 was to facilitate physical mobility, independent and self-controlled lifestyle for disabled persons (Bartlett, 2009, p. 497; Kanter, 2014).

Question of Legal Capacity and People with Disabilities

Given the present Convention, the people with disabilities have the equal legal capacity as their peers. As Article 12 provides, A) that the disabled persons are equal citizens before the law (Clifford, 2011, p. 15; Devi, Bickenbach, & Stucki, 2011, p. 250). the disabled individuals have similar legal capacity to enter into contract with any agencies, exercise all types of available rights such as Financial: to have a bank account, to hold property, to sell their land; Political: right to exercise vote and participate in elections. Social rights such as to have a family; Cultural affiliation with their respective community, they would equal access to community based services such as schools, cultural functions and university level education (Mehrotra, 2013). This arrangement imposes duties on states to

take necessary measures to protect disabled persons from legal and practical abuse either within system or outside of the system. This legal safeguard must be confirmed international by legal guidelines relating to people with socially oppressed identity (CRPD, 2007: article: 12:10).

Nandini Devi writes that Article 12:3 requires that the states parties would provide full support to disabled persons so that they may realise, exercise and serve their individual interests (Devi et al., 2011, p. 251). In their view, this article launched 'Supported Decision Making Model' for people with disabilities regardless of their nature of disability/impairments. Further they convincingly write that under the 'Supported Decision Making Model' the disabled persons find themselves able to make decisions with support from trusted individuals, network of individuals, other expert such as non-governmental organization or some other entity. The Decision-Making Paradigm of CRPD 2006 also used in the case of non-disabled, who are uncomfortable in making choices related to their personal development. For instance, people with blindness need a reader to access the printed material, people with deaf can read, but they still require support to communicate their understanding to third parties like financial institutes, service providers. Later on, the shift from 'substituted decision making' to 'supported decision making' was viewed as a radical shift in the literature of decision making concerning the disabled community. As Gerald Quinn wrote, Article 12 of UNCRPD 2007 is "emblematic of the paradigm shift of the Convention" (Cited in Devi et al., 2011, p. 256). Moreover, Quinn (2010) argued that this UNCRPD shift from 'substituted' to 'supported' made people with disabilities 'subjects' rather than 'objects' . In concise, it may be argued that Article 12 of CRPD has made a fundamental shift in the decision-making paradigm and bring out the disabled people from autonomy crisis. After the discussion of legal capacity of disabled individuals, the subsequent script would explore the educational arrangement of CRPD 2007, because the education does determine the individual's autonomy, make them capable/independent to hold their individuals' decisions, possessing their rights, holding property and controlling their own affairs. For this reasons, education became a significant subject for the Persons with Disabilities around the world.

Educational requirement of People with Disabilities and CRPD Obligations

The UN realised that 'education' is a fundamental need of Persons with Disability. Therefore, after several non-binding resolutions like Convention on the Rights of the Child (UN-CRC) 1989, which clearly provided that children with physical impairment could not be deprived of education (CRC, 1989, article:23-28-29; Hodgson, 2013, 187-191), some other international Conventions like International Covenant on Civil, Economic, Social Cultural and Political Rights (ICESCPR) 1966 whereby the UN also recognised the educational need of the disabled people (Hodgson, 2013:187; ICESCPR, 1966). The World Conference on Human Rights (WCHR) was held in June 1993 in the Vienna city of Austria which reaffirmed that all people are born free and everyone has equal rights to education and employment (WCHR, 1993; Hodgson, 2013:191-192). Hodgson writes that 'The Programme of Action' urged all the state parties to A) ensure educational and employment rights to all their respective citizens and any discriminatory treatment to people with disabilities would be contravention of their fundamental individual rights. Consequently, Article 24 of the Convention on the Rights of Persons with Disability 2007 describes 'education' as developing instrument of human potential and of making the best use of it in the society (EHRC, 2007:23; CRPD, 2006: article:24:16). B) It clarified that through education, the disabled community could be empowered and made active and productive members of the society (Kett et al., 2009; Lang et al., 2011). C) the Convention recognises certain hurdles which often come in the way of realisation of rights, like physical structure of educational institutes/campuses, discriminatory practices, rules and regulations and administrative prejudices- in general, the framework of social, cultural, educational and political settings (Ibid:16). In this situation, the state is under obligation to facilitate the access to the 'General Educational System' such as entrance tests, proper information, better cooperation of staff, well-trained teachers, inclusive classrooms, study material in accessible format (CRPD, 2006, 16-17; UN, 2007). Further, CRPD 2006 makes the mandatory instruction to states that people with disabilities cannot be excluded from 'Free and Compulsory' Education and 'secondary education' on grounds of his and her physical restrictions (EHRC, 2007:23-24; CRPD, 2007:17). EHRC (2007) argues that the CRPD's educational arrangement aims to develop independent life and capacity development. By conforming to this proposition,

Hodgson (2013) wrote that “In States where education is compulsory it should be provided to girls and boys with all kinds and all levels of disabilities, including the most severe (Quoted in Hodgson, 2013:193)”.

In order to fulfil the educational requirement and certain additional needs, all the ratified states would provide accessible teaching-aids, accessible classrooms and appropriate format of curriculum to all the teachers and students with disability; sign language must be recognised as primary language for people with hearing impairment; students with blindness could get text in Braille, audio-description, tactile learning assistance; and students with locomotive disability should be able to reach the classroom (Dhanda, 2006; Grant & Neuhaus, 2012; Mladenov, 2013). This method of removing the impediment from the educational structure is characterised by UNICEF (2007) as ‘Inclusive Education System’. Hodgson (2013) writes that this Convention insisted that all the states pay special attention to three specifically mentioned categories at various stages of life, namely A) in the early age of youth with disability, B) in the pre-school age of children with disabilities and C) in the case of women with disabilities (Hodgson, 2013:193). Further, it suggests that states come up with fresh, clear and effective national policy to meet the aims and objectives of the Convention. Hence, the clear thrust of Article 24 is on the developing ‘Inclusive School System’ for all rather than introducing ‘The Special School’ for Children with Disabilities. After the education, the CRPD is solely concerned about the health of the disabled individuals. Therefore, the next heading is on the health provision of CRPD 2006.

Insuring Health and Promoting Wellbeing

The CRPD realised that health is another influential concern for people with health limitation. Therefore, it recognised ‘health’ as a fundamental right and argued A) that the state would facilitate an affordable health system, enabling disabled people to lead a better life (CRPD, 2007: article:25:18). B) it advised state parties to provide health facility according to special case-wise needs, for instance, women with disability might need certain gender-sensitive health care, children with autism would need some specific kind of support while other types of impairment need different health requirement (UNCRPD, 2006, article: 25: 18). C) According to CRPD instructions, states are bound to provide enough information

about sexual diseases. In the opinion of CRPD most of the health facilities would be nearer to people with disabilities, including rural areas, and are thus ideal for the dissemination of such information. D) It emphasises the availability of trained health professionals on equal cost with their non-disabled peers (UNCRPD, 2007: 18). To provide health, the CRPD 2007 made two fundamental contributions to the literature on health. Firstly, it described 'Habilitation' where all the preventives measure should be taken for preventing the child from particular diseases. Secondly, 'Rehabilitation' in which it has been instructed to the member states to accommodate the People with Disabilities in their general structure rather than creating a special corridor for them. Therefore, the subsequent debate is concerned on the proviso of 'habilitation and rehabilitation'.

Habilitation and Rehabilitation Provisions

This Convention seeks to provide the most appropriate places where people with disabilities would be able to feel independent and enjoy their life with fuller capacity. Towards this end, it instructs the states to take effective legal measures with the help of peers with Persons with Disability to "attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life." (Quoted in CRPD, 2007, article 26, 19). In order to realise aforementioned aims, the states were to take certain steps such as A) it would start its services from earliest possible stage; B) the services would be based on "the multidisciplinary assessment of individual needs and strengths" (CRPD, 2007, article:26: A: 19); C) all the facilities would be available close to their home and possible nearest place with adequate quality; D) the state party would promote knowledge of health, community, disability, community-based services, assistive devices, technology, design with special features with the aim to habilitate and rehabilitate them in the mainstream society on equal terms (Ibid;19). Thus, it is clear that the 2007 convention aims to establish equality in the society, not only providing the formal equality but also seeks to introduce Sen's and others conceptualization of 'equality of outcome' where all the citizen require economic independence, political participation and similar social practices. Consequently, the equality of outcome became most important in the case of disabled community. Which is majorly determined by

economic independence achieved through employment opportunities? The next section looks at the contribution CRPD has made.

Employment Provision and CRPD proposal

Article 27 of UNCRPD 2007 provides clear instructions to all the signatories to “recognize the right of persons with disabilities to work, on an equal basis with others” (quoted in CRPD, 2007, article: 27: 19; Harpur, Jan 2012:6)(UN-CRPD, 2006). This international standard applied in both cases of ‘disability by birth’ and ‘disability occurred in later life’ and made it binding upon signatories to recruit all types of disabled in all fields of public employment. B) According to the Convention, states have to constitute a ‘Grievance redressal Cell’ where a fair trial is possible. C) The CRPD understood accessibility as the accessible workplace that would give satisfaction to an employee with disabilities concerning their work. Thus, the states have to follow compulsory accessibility strategy. D) It ensures equal rights in ‘Trade Unions’. E) The people with disabilities have a right to have their own business. F) It instructs the states to facilitate disabled recruitment in the private sector, by introducing binding legislation, practicing affirmative action, incentive strategy. They have a similar right to take part in ‘Open Labour Market’ with their counterparts (CRPD, 2007: article: 27: 20). It is also clearly mentioned that disable persons could not be forced and kept under slavery and servitude (CRPD 2006, 20; UN, 2007:86). After the employment provision, the CRPD realised that there must be certain institutional set up for making better implementations of aforementioned aims and objectives (Kanter, 2014). Therefore, the next section is exclusively directed to the institutional set-up of CRPD.

Institutional Mechanism and Disability Framework

The institutional set up determines the success of legislations, conventions and treaties. Therefore, the CRPD 2007 provides an extensive institutional mechanism for collecting data. Article 31 writes that the national data collection methods must conform to international human rights standards and these data have a specific aim- to show the degree of implementation, to enhance the quality and produce good, effective outcome (CRPD, 2007: article: 31: 23-24). Article 32 advises the states to come up with ‘International Disability Agenda’ and

launch effective efforts to achieve these through the strategy of 'International Cooperation' (CRPD, 2007: article: 32: 24). This Article also suggests the need to develop 'capacity building' through sharing information, technology, knowledge, research, educational tools, educational institutions, ascertaining method of teaching, exchanging views, regular meeting, periodic educational tours and so on (UN-CRPD, 2006, pp. 28-29). In the year of 2007, through a report, the UN obliged that international cooperation is vital to achieving the universal disability policy, design, services and access (UN, 2007: 17-18; WB, WHO, 2011).

Article 33 deals with national implementing body, as per which the state would constitute an 'Independent National Body' for fair implementation (CRPD, 2007: article: 33:25; UN, 2007:24). Further, the UN Report says that it has aimed to implement at the ground level by introducing two levels of monitoring by the national and international institutional setup. Secondly, it specifically mentions that the civil society, private sector and non-governmental organisations would be involved in order to monitor the process of implementation, explanation, violations, formulation of laws, practicing mode of independent life, enhancing the autonomy of disabled individuals and fair distribution of social services (UNCRPD: 33:25). Further, the UN Report (2007) mentioned that the UN Committee on CRPD 2007 follows various ways of monitoring the implementation of CRPD in the jurisdictions of signatories. The provision for Individual Communication, by which the individual with disability could write directly to the UN Committee on the breach of his or her rights by the particular national and international agencies and the inquiry Procedure: under which the enquiry committee itself will investigate violations, implementation, misinterpretation and other issues related to UNCRPD regulation are noteworthy (UN, 2007:26).

Article 34 of the present Convention provides a Committee on CRPD, which contains 12 experts from different disability fields (UN, 2007:24-27). After the 60th ratification and accession, the membership of the committee on CRPD can be increased by 6 and reach the highest- 18 members. This committee would have the prime responsibility to serve all the provisions covered by CRPD. State parties would elect the committee members and its distribution would be on equitable geographical representation, different cultures and gender balance (CRPD, 2007, article: 34:25). According to Article 35, the state parties are bound to submit their

report to the UN Committee every four years. Apart from this, the committee has special rights to ask for another report at any point (CRPD, 2007, article: 35:26). Article 36 gives rights to a committee to examine the signatories' report and make suggestions and general recommendations to follow up in the future. After this, the state party could respond with their scientific and reliable data to the UN Committee on CRPD about its further action plan (CRPD, 2007, article: 36:27). Article 37 explains the relationship between the committee on CRPD and state party. This relationship could suggest some measures to enhance the disability status in a particular country (CRPD, 2007) Article 38 explains the committee's relationship with other bodies. It says that to get effective implementation, cooperation among various bodies should be coherent and proper, informed in terms of data, information and action and statement (CRPD, 2007:28). This committee can ask another committee or organisations to submit a report on a particular issue for greater implementation of UNCRPD 2007. Article 39 of this Convention says that the committee on CRPD would submit its report to UNGA every two years. It will examine social, economic and political factors and make a certain recommendation to UNGA (UN-CRPD, 2006, pp. 10-12 Article: 10-16).

Article 40 particularly advises all the signatories to take part in state party conferences to exchange ideas, implementation measures, and new technologies to bring better social status to disabled people. Within six months of enforcement of the Convention, the Conference of the States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General of the United Nations bi-annually or upon the decision of the Conference of States Parties. (CRPD, 2007: article: 40: 29). In the following section, some other important provisions of CRPD are discussed.

CRPD 2006 and its Associated Provisions

According to Article 41, the Secretary-General would be the 'depository' for signatories where all the states would submit their ratification document, report, and other reports and recommendations like amendments, denouncement, etc. (CRPD, 2007, article: 41: 29). In the history of the UN, it was for the first time that the Regional Organisations were invited to be a party like sovereign states signatories. As Article 42 says, the present Convention shall be "open for signature by all

States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007” (CRPD, 2007, article: 42: 29). Article 43 explicitly mentioned that the ‘consent’ would be bound to all states and regional organisations that ratified it (CRPD, 2007, article: 43: 29). Article 44 of CRPD defines ‘regional integration organization’ as an organization constituted by sovereign States for a particular geography (CRPD, 2007:30). Article 45 says that this present Convention would enter into force after 30 days of the twentieth ratification by states and organisations (CRPD, 2007: article: 45:30). The 46th provision deals with reservation; it says that the reservation shall not be permissible if it is incompatible with the objectives of this Convention (Ibid: 30). Article 47 allowed all the signatories, including organisations, to submit their desired amendment to the office of United Nations General Secretary (UNGS) with their references (CRPD, 2007: article: 47:30). After receiving such amendment, the UNGS would circulate this document to all the signatories by asking to notify whether they are against the amendment or in favour of the amendment. If one-third member would express support, then UNGS would convene States Parties conference on that issue. If the proposal gets a two-thirds majority of the conference, then UNGS would submit a report to UNGA for approval and subsequent ratification of other signatories (CRPD, 2007: 29-30). These amended and ratified changes come into force after 30 days of ratification of the 20th member. This particular provision would be mandatory to only those members that have ratified it. This Convention provides space for members to denounce some provisions, under Article 48 which says that all the signatories are allowed to criticise the Convention. This denouncement would become effective after one year of UNGS notification (CRPD, 2007: article: 48: 31). Article 50 provides a list of languages in which the present Convention would be equally authentic, namely, Arabic, Chinese, English, French, Russian and Spanish (CRPD, 2006, UN Enable, 2015, Access on 27 June 2015).

Concluding Remark

In brief, the UNCRPD 2006 was the first human rights treaty in the 21st century at the international level which has accommodated the needs of Persons with Disabilities. CRPD has credit to get recognised as fastest signed and ratified human rights instrument in the history of the United Nation. This treaty does

not bring fresh rights for disabled community; rather than recognises all the human rights treaties like UDHR 1948, ICCPR, ICESCR 1966, CRC 1989, etc. – to be equally applicable to the disabled. For the greater enjoyment of rights, the state would be the responsible body to arrange social, political and economic setting in a way that all the people with the functional limitation shall be able to exercise their rights. This notion of inclusiveness is characterised as ‘reasonable accommodation’ principle, according to which all the signatories are bound to modify their existing physical structure, bring proper amendment in their territorial laws, delegitimise the social and political traditions which discriminate against people with disabilities, include assistive devices, encourage ‘universal design’, ensure accessibility in all the spheres such as education, the internet services, information system for individual autonomy and independent life for individual with disability. Yet this convention writes that the ratified states would have to amend their national legislation by conforming to the UNCRPD aims and objectives. These mandatory principle forces state to obey disability norms.

References

- Anastasiou, D., & Kauffman, J. M. (2013). The social model of disability: Dichotomy between impairment and disability. Paper presented at the The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine.
- Arnardóttir, O. M., & Quinn, G. (2009). The UN Convention on the rights of persons with disabilities: European and Scandinavian perspectives: BRILL.
- Bagchi, A. (2009). Disability and human rights: A socio-historical dichotomy. Rights of disabled women and children in India. New Delhi: Serials Publications.
- Bartlett, P. (2009). The United Nations Convention on the Rights of Persons with Disabilities and the future of mental health law. *Psychiatry*, 12(8), 496-498.
- Beckett, A. E., & Campbell, T. (2015). The social model of disability as an oppositional device. *Disability & Society*, 30(2), 270-283.
- Clifford, J. (2011). The UN disability convention and its impact on European equality law. *The Equal Rights Review*, 6, 11-25.
- Devi, N., Bickenbach, J., & Stucki, G. (2011). Moving towards substituted or supported decision-making? Article 12 of the Convention on the Rights of Persons with Disabilities. *ALTER-European Journal of Disability Research/Revue Européenne de Recherche sur le Handicap*, 5(4), 249-264.
- Dhanda, A. (2006). Legal capacity in the disability rights convention: stranglehold of the past or lodestar for the future. *Syracuse J. Journal of International Law & Commerce* 34(2), 429-462

Fraser Butlin, S. (2011). The UN Convention on the Rights of Persons with Disabilities: does the Equality Act 2010 measure up to UK international commitments? *Industrial Law Journal*, 40(4), 428–438.

Ghai, A. (2019). *Rethinking disability in India*: Taylor & Francis.

Grant, E., & Neuhaus, R. (2012). Liberty and justice for all: the Convention on the Rights of Persons with Disabilities. *ILSA J. Int'l & Comp. L.*, 19, 347.

Harpur, P. (2012). From disability to ability: Changing the phrasing of the debate. *Disability & Society*, 27(3), 325–337.

Harpur, P., & Loudoun, R. (2011). The barrier of the written word: analysing universities' policies to students with print disabilities. *Journal of Higher Education Policy and Management*, 33(2), 153–167.

Kanter Arlene, S. (2014). *The Development of Disability Rights under International Law: From Charity to Human Rights*: New York: Routledge.

Kanter, A. S. (2006). The promise and challenge of the United Nations Convention on the Rights of Persons with Disabilities. *Syracuse J. Journal of International Law & Commerce* 34(2), 429–462.

Kanter, A. S. (2014). *The development of disability rights under international law: From charity to human rights*: Routledge.

Kayess, R., & French, P. (2008). Out of darkness into light? Introducing the Convention on the Rights of Persons with Disabilities. *Human Rights Law Review*, 8(1), 1–34.

Kett, M., Lang, R., & Trani, J. F. (2009). Disability, development and the dawning of a new convention: a cause for optimism? *Journal of International Development: The Journal of the Development Studies Association*, 21(5), 649–661.

Kothari, J. (2010). The UN convention on rights of persons with disabilities: An engine for law reform in India. *Economic and Political Weekly*, 65–72.

Kothari, J. (2012). *The Future of Disability Law in India: A Critical Analysis of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995*: Oxford University Press.

Lang, R. (2009). The United Nations Convention on the right and dignities for persons with disability: A panacea for ending disability discrimination? *ALTER-European Journal of Disability Research/Revue Européenne de Recherche sur le Handicap*, 3(3), 266–285.

Lang, R., Kett, M., Groce, N., & Trani, J.-F. (2011). Implementing the United Nations Convention on the rights of persons with disabilities: principles, implications, practice and limitations. *Alter*, 5(3), 206–220.

MacKay, D. (2006). The United Nations Convention on the rights of persons with disabilities. *Syracuse J. Int'l L. & Com.*, 34, 323–331.

Mehrotra, N. (2013). *Disability, gender and caste intersections in indian economy Disability and Intersecting Statuses* (pp. 295–324): Emerald Group Publishing Limited.

Mladenov, T. (2013). The UN Convention on the Rights of Persons with Disabilities and its Interpretation. *ALTER-European Journal of Disability Research/Revue Européenne de Recherche sur le Handicap*, 7(1), 69–82.

Perlin, M. L. (2012). *Promoting social change in Asia and the Pacific: The need for a disability rights*

tribunal to give life to the UN Convention on the Rights of Persons with Disabilities. *Geo. Wash. Int'l L. Rev.*, 44, 1.

Shakespeare, T. (2008). Debating disability. *Journal of Medical Ethics*, 34(1), 11-14.

Sherlaw, W., & Hudebine, H. (2015). The United Nations Convention on the Rights of Persons with Disabilities: Opportunities and tensions within the social inclusion and participation of persons with disabilities. *Alter*, 9(1), 9-21.

Smitha, N. (2015). The New Human Rights Paradigm: Convention on the Rights of Persons with Disabilities and its Implementation in India. *Christ University Law Journal*, 4(1), 49-69.

UN-CRC, U. N. (1989). *Convention on the Rights of the Child*: United Nations.

UN-CRPD. (2006). *Convention on the Rights of Persons with Disabilities and Optional Protocol*: United Nations.

UN Charter, U. N. (1945). *Charter of the United Nations*: United Nations.

Weller, P. (2012). *New law and ethics in mental health advance directives: The convention on the rights of persons with disabilities and the right to choose*: Routledge.

