



## India's 'PwDs Act 1995' and the UNCRPD, 2008: Way Forward

*Article 41 of the Indian Constitution refers to disability as a Directive Principle of State Policy. Fundamental Rights in the Constitution do not cover disability as a prohibited ground of discrimination nor are persons with disability (PwD) covered under the category of affirmative action. However, in the 1990s, the Indian government enacted a number of legislations addressing PwDs and among them the Persons with Disabilities Act 1995, is central.*



### The Persons with Disabilities (PwD) Act, 1995

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act was enacted in 1995, and came into effect in 1996. The law was enacted in furtherance of the *Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region*, which was adopted by the Economic and Social Commission for the Asia and Pacific in Beijing in 1992. Being a signatory to the said Proclamation, the Indian government enacted the Law.

The Act has 14 chapters dealing with issues such as prevention and early detection of disability, employment, education, non-discrimination, social security, etc. It addresses seven categories of impairment, which are defined as 'disability', namely, low vision, leprosy cured, hearing impairment, locomotor disabilities, mental illness and mental retardation.

#### Entitlements in the PwD Act

The Act provides for benefits to the PwDs in the areas of education, employment, accessibility and social security. The entitlements and benefits fall under three broad categories: distributive justice, anti-discrimination and welfare measures.

The Act provides that a minimum of three percent of seats be reserved for the PwDs in government educational institutions, government employment and poverty alleviation schemes. The Act provides for non-discrimination in employment and in other sectors on account of disability. However, these cannot be claimed as a matter of right, as their availability is subject to the 'economic capacity and development' of the State.

### United Nations Convention on the Rights for Persons with Disabilities (UNCRPD), 2008

UNCRPD was signed by India on March 30, 2007, ratified on April 03, 2008 and came into force on May 03, 2008.

The Convention consists of 50 articles and identifies the purpose of the Convention; which is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all PwDs, and to promote respect for their inherent dignity".

### UNCRPD, 2008 and the PwD Act, 1995 – A Comparison

The following are some of the areas where the provisions of the PwD Act 1995, conflicts with the UNCRPD, 2008 which has necessitated formation of a new law:

- The PwD Act, 1995 extends the entitlements and protections to a few categories of impairment, which are medically determined. The UNCRPD, on the other hand, adopts a universal approach to disability, without quantifying the impairment or its effects and focuses on addressing the social barriers that hinder the equal participation of the disabled.
- The PwD Act focuses exclusively on securing the socio-economic rights of the PwDs, without any reference to the civil-political rights whereas the UNCRPD stresses upon enjoyment of all the rights on an equal basis with the non-disabled.
- The principle of reasonable accommodation that the UNCRPD refers to is missing from the PwD Act except where it refers to employment in the public sector.
- The UNCRPD acknowledges that disability is a cross cutting issue of gender and childhood while the PwD Act positions disability independently with undifferentiated experience.

### Way Forward

The PwD Act, 1995 falls short of the provisions of UNCRPD. The Indian government is therefore drafting a new law suitably aligned with the UNCRPD. It proposes to amalgamate three other laws/acts, namely, The Mental Health Act, 1987; Rehabilitation Council of India Act, 1992; and The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act 1999.



"Disability is not a brave struggle or 'courage in the face of adversity.' Disability is an art. It's an ingenious way to live." **Neil Marcus**

## Need for Involving CSOs in Mainstreaming Disability in Rajasthan

**C**UTS Centre for Consumer Action, Research & Training (CUTS CART) is implementing a one-year project on 'Mainstreaming Disability in Rajasthan' in partnership with Sightsavers. The main objective of the project is to sensitise and build the capacity of select development agencies and educational institutions to develop human capital for promoting effective and meaningful inclusion of PwD into larger development actions and processes at all levels and enable them to access their rights and entitlements to a life of dignity.

This project is being implemented in partnership mode with selected development organisations and educational institutions in Rajasthan. Sensitisation workshops, access and HR audits with audits of policies for creating barrier free environment, etc are planned.

A 'state level consultation cum launch meeting' was organised in Jaipur, on September 01, 2010 which was aimed towards informing the participants about project objectives and activities and identifying partners. More than 50 participants representing various developmental



organisations, educational institutions and Department of Social Justice and Empowerment participated.

Prabhat Sinha, Programme Manager, Sightsavers spoke about disability and the need to mainstream disability by linking it with Millennium Development Goals.

Ajay Singh, Deputy Director, Department of Social Justice and Empowerment, Government of Rajasthan said that the state government is soon going to roll out a survey to map all the disabled people in the state and provide unique identification number to ensure the benefits reach them.

Ketan Kothari, Programme Officer, Sightsavers Mumbai said the issue of disability is still not reflected as priority of the government and the civil society. Prasanna Pincha, Special Rapporteur, National Human Rights Commission, New Delhi talked at length on the UNCRPD.

## PwDs Can Perform Miracles

**Y**ears ago a child named as Dinesh Gurjar of one of the backward castes, residing in a remote village of Alwar in Rajasthan turned blind at the age of five and lost his father when he was a student of class Nine. He passed his secondary exam with 66<sup>th</sup> position and higher secondary exam with 20<sup>th</sup> position in the Rajasthan. Though he was a meritorious student but could not continue his studies because of financial hardships

His determination for procuring professional training drove him to a training course for stenographers from All India Confederation of the Blind, Delhi. He was selected by Punjab National Bank for the post of steno/typist and joined the bank on November 15, 1988. His financial stability enabled him not only to complete post graduation but also appear in examination for bankers from Indian Institute of Bankers, Mumbai.

Dinesh fought for permission to appear for an examination of the bank for promotion to officers cadre. He was promoted in the year 2001 with other general candidates without the favour of reservation. Later in 2006, he was promoted as a Manager. He now works in the Information Technology Department of the bank. He was founder member of *Drishtiviklang Sangh* Jaipur and its first Honorary Vice President. He served the association as Honorary General Secretary from 1999-2006. He has been working as Honorary President since 2006 till date. He has provided opportunity to hundreds of blind persons for typing and computer training.

Dinesh was awarded by a "National Award to best Employee" by President of India KR Narayanan for his innovative and hard work in the Bank. Now his ultimate aim is to serve the society of PwD, make them productive for the nation and ensure work for each of them.

## India Cannot Achieve the MDGs Unless PwD are Mainstreamed

**A** half day state level consultation was arranged under the project on the occasion of 13<sup>th</sup> *International Day of Persons with Disability* in Jaipur, on December 03, 2010. The theme of this year's disability day was *Keeping the promise: Mainstreaming Disability in the Millennium Development Goals towards 2015 and beyond*. The consultation aimed to promote a better understanding of disability issues with a focus on the rights of PwDs and gains to be derived from the integration of PwDs in every aspect of the political, social, economic and cultural life of their communities.

Aditi Mehta, Principal Secretary, Department of Social Justice and Empowerment was the Chief Guest and Prasanna Pincha was the key resource person. More than 50 participants attended the consultation. A street play, covering major forms of disabilities as characters was enacted near Albert Hall, Jaipur by *Goonj Sansthan*, which was watched by more than 100 people.



## भवनों की एकसैस ऑडिट हेतु ‘प्रशिक्षकों का प्रशिक्षण’ कार्यक्रम

एकसैस ऑडिट नियत दिशा निर्देशों की पालना जांचने की एक चैकलिस्ट होती है। जिसके आधार पर भवन में आम लोगों व विकलांग जनों की प्रतिदिन की सुगमता व सुरक्षित आवाजाही भवन के प्रकार व प्रारूप, रखरखाव तथा सुरक्षा मानकों का निरीक्षण किया जाता है। इसके तहत भवन के वातावरण, सुरक्षा क्षेत्रों, रास्तों, संकेतों व आपातकालीन निकासी की व्यवस्था व उपकरणों की सुनिश्चिता को भी जाँचा जाता है, तदनुसार उपरोक्त सभी को बेहतर बनाने हेतु सुझाव प्रस्तुत किये जाते हैं।

**प्रशिक्षणार्थी:** नवम्बर 29-30, 2010 को आयोजित प्रशिक्षण में मुख्य रूप से परियोजना के हिस्सेदार एन.जी.ओ. जैसे श्योर, बाइमेर, उरमूल ट्रस्ट, बीकानेर, ‘कट्स’ मानव विकास केन्द्र, चित्तौड़गढ़, ‘कट्स कार्ट’ व ‘साइटसेवर्स’ के परियोजनाधिकारी व कुछ स्वतन्त्र रूप से विकलांगता के क्षेत्र सक्रियवादियों सहित कुल 15 प्रतिभागियों ने प्रशिक्षण में भाग लिया।

**एकसैस ऑडिट प्रशिक्षक:** आरूषि संस्थान, भोपाल जो कि विकलांगता के क्षेत्र में जानी मानी संस्था है, के दो पदाधिकारी अनिल मुदगल एवं रोहित त्रिवेदी, जो कि स्वयं एक नेत्रहीन व्यक्ति है, ने प्रतिभागियों को प्रशिक्षण प्रदान किया। प्रशिक्षणार्थियों की संयुक्त भागीदारी से दो भवनों की एकसैस ऑडिट भी सफलतापूर्वक की गई।

### प्रशिक्षण विवरण- प्रथम दिन

मधुसूदन शर्मा, परियोजनाधिकारी, ‘कट्स कार्ट’ ने सभी प्रतिभागियों का स्वागत किया तथा अब्राहम जॉर्ज, निदेशक, साइटसेवर्स ने प्रशिक्षण के उद्देश्यों की जानकारी प्रदान की तथा प्रशिक्षकों से प्रशिक्षण कार्यवाही आगे बढ़ाने का आग्रह किया।

सभी प्रतिभागियों ने अपना संक्षिप्त परिचय दिया तथा प्रशिक्षण से अपनी अपेक्षाओं के बारे में बताया। प्रशिक्षकों ने अपेक्षानुसार पाठ्य सामग्री व विषय वस्तु देने हेतु आश्वस्त किया तथा आरूषि संस्था का परिचय देते हुए कहा कि आरूषि का सम्पूर्ण भवन पूर्णरूप से बाधारहित वातावरणयुक्त व विकलांग लोगों द्वारा आसानी से आवागमन योग्य है, जिसकी अनुकृति स्थानीय राज्य सरकार भी कर रही है।

शुरुआत में दो फिल्मों का प्रदर्शन किया गया जिसमें आरूषि संस्थान व आरूषि द्वारा निर्मित एक स्कूल के बाधारहित वातावरण को दर्शाया गया एवं बताया गया कि संस्थान की प्रत्येक सुविधाएं विकलांगों की पहुंच व उनकी सीमाओं को ध्यान में रखकर बनाई गई है। भवनों के प्रवेशद्वारों पर रेम्प व रैलिंग बनी हैं जिन पर ब्रेल लिपि में संकेत बनाए गए हैं। भवनों में विभिन्न दिशाओं की जानकारी एवं जंक्शन को बताने हेतु विशेष निर्मित टाइल्स व टेक्टाइल मैप भी लगाये गये हैं। ब्रेल संकेतों युक्त लिफ्ट, विशेष आकार के दरवाजे, शौचालय व स्नानघर, बिजली के स्विच आदि की ऊँचाई आदि सभी विकलांगों की सुविधानुसार लगाये गए हैं। इन फिल्मों के माध्यम से एकसैस ऑडिट के विभिन्न पहलुओं की जानकारी दी गई एवं बताया गया कि भवन निर्माण के समय अगर इन पहलुओं का ध्यान रखा जाए तो कम खर्च में भवनों को बहुत हद तक बाधा रहित बनाया जा सकता है।

प्रशिक्षकों ने संयुक्त रूप से एक प्रजेन्टेशन भी प्रस्तुत किया जिसमें एकसैस ऑडिट के सैधान्तिक पक्षों, परिभाषा व एकसैस ऑडिट करने हेतु काम में लिये जाने वाले उपकरणों के बारे में जानकारी प्रदान की गई। उन्होंने आगे बताया कि एकसैस ऑडिट का निष्पादन सामान्य व विकलांग दोनों प्रकार के लोग कर सकते हैं। मगर एकसैस ऑडिट टीम में अनिवार्य रूप से विकलांगजनों का होना जरूरी है जिससे कि इनको आने वाली बाधाओं को वास्तविक रूप से जाना जा सके।

अंत में प्रशिक्षण स्थल का प्रायोगिक रूप से एकसैस ऑडिट किया गया तथा इसके मुख्य द्वार से प्रवेश कर, शौचालयों, लिफ्ट, स्वागत कक्ष, भोजनालय, आवास कक्षों आदि का जायजा लिया गया एवं एकसैस ऑडिट के विभिन्न आयामों व पक्षों को ध्यान में रखते हुए सुझाव तैयार किये गये।



### प्रशिक्षण विवरण - दूसरा दिन

प्रशिक्षण के दूसरे दिन एकसैस ऑडिट दल ने शिक्षा संकुल भवन का भ्रमण किया एवं एक ‘एकसैस ऑडिट फॉर्मेट’ की मदद से भवन में व्याप्त विभिन्न तकनीकी पक्षों का अवलोकन किया तथा सम्बन्धित अधिकारियों को निर्मांकित सुझाव प्रस्तुत किये:

1. मेन गेट पर 1:12 के अनुपात में रेम्प तथा 900 एम.एम. ऊँचाई की रैलिंग बननी चाहिए।
2. मीटर बॉक्स, स्विच बॉक्स, फायर बॉक्स, कूलर, सूचना पट्ट आदि की ऊँचाई अधिक होनी चाहिए तथा पायदान, पीकदान व अलमीरा आदि रास्ते में नहीं होने चाहिए जिससे की नेत्रहीन व्यक्तियों की दुर्घटना रोकी जा सकें।
3. कोरीडोर के ढलान को कम करना चाहिए।
4. लिफ्ट में स्विच के पास ब्रेल साइनेज चस्पा होने चाहिए।
5. पीने के पानी की जगह बाधा रहित हो।
6. पूरे शिक्षा संकुल भवन में एक भी शौचालय विकलांग व्यक्तियों हेतु सुविधाजनक नहीं है। अतः निर्मांकित माप के शौचालय हर एक माले पर बनाये जाने चाहिए:
  - शौचालय: 2000 एम.एम. X 2000 एम.एम
  - दरवाजा: न्यूनतम 900 एम.एम.
  - रैलिंग ऊँचाई: 700 एम.एम
  - क्रिक प्लेट: 350 एम.एम
  - वाश वेशिन टॉप: 750-800 एम.एम
  - ग्रेब बार टॉप: 1500 एम.एम
  - मूत्रालय ग्रेब बार बटन: 1000 एम.एम
  - कांच जो कि 100 एम.एम झुका हुआ हो: 200 एम.एम.

उपरोक्त एकसैस ऑडिट के बाद टीम ने ‘साइटसेवर्स’ के ऑफिस का भी ऑडिट किया एवं उपरोक्तानुसार कुछ महत्वपूर्ण सुझाव दिए।

### परिणाम

1. सभी प्रतिभागियों ने ‘एकसैस ऑडिट’ की प्रक्रियाओं को जाना तथा स्वतन्त्र रूप से यह कार्य करने में दक्षता प्राप्त की।
2. शिक्षा संकुल तथा साइटसेवर्स भवनों की एकसैस ऑडिट सफलतापूर्वक की गई।

