



Philosophical and Legislative Dimensions of Disability in the South Asian Context

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ABSTRACT:

The 21st century has witnessed significant progress in disability rights across South Asia, particularly following the adoption of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter called UNCRPD). While, among other countries, India, Bangladesh, Pakistan and Sri Lanka have introduced new disability laws and policies post-ratification, the implementation gap remains a major immediate challenge. This paper examines the legal provisions and disability policies in these countries, highlighting the persistent discrepancies between legal frameworks and ground realities. Despite the shift toward a rights-based approach, issues such as inadequate accessibility, weak enforcement mechanisms, and existing charity-driven perceptions continue to obstruct complete inclusion. The paper also outlines important strategies for bridging policy gaps, emphasizing accountability, financial aid, awareness, and disability leadership. By addressing these shortcomings, South Asian nations can move closer to achieving a meaningful disability inclusion.

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The conceptualization of disability has undergone significant evolution across different eras. Historically, disability was seen through a lens of medical or charity model, which emphasised on functional limitations and differences among individuals rather than reflecting on their experiences of discrimination and negligible participation in society. This led to a pervasive

marginalisation of persons with disabilities and compelled them to depend on external support. However, with the beginning of the 1970s, South Asia witnessed a gradual transition from the then existing disability models to the social model of disability focusing on a wide range of social and material factors and conditions which restrict opportunities for persons with disabilities to actively participate and contribute in mainstream social and economic activities (Oliver). According to Tom Shakespeare, the social model provided a powerful framework to challenge the dominant medical and charity model and highlighted societal barriers (Shakespeare 267). Several disability rights activists voiced out the need for building an inclusive society which also caters to the requirements of persons with disabilities. Paul Hunt argues, "the problem of disability lies not only in the impairment of function and its effects on us individually but more importantly in our relationship with "normal" people" (Hunt 146). Considering the complexity of multiple factors dominant in South Asia, including cultural and religious beliefs and traditions, the journey of raising awareness among people has been a difficult one. In a study conducted by R. Lang, one of the participants from Sri Lanka mentions:

Whether people in the community have met disabled people or not, they still believe that disability is a result of Karma or sins of the past. Disabled people and their families are despised. People are afraid to come in contact with disabled people. They think that disability is contagious. Some people in the

community tell people to avoid disabled people because they might also attract the bad luck of the disabled person and the family. (Lang 298)

Persons with disabilities have frequently been stigmatised and subjected to unfavourable stereotypes in the countries under discussion. Further, according to Meekosha and Soldatic, persons with disabilities, frequently identified as the largest minority group globally, are particularly vulnerable, experiencing higher rates of poverty, poor health, limited educational provisions, and fewer job opportunities. Violence and abuse are also common, often exacerbated by a lack of knowledge about their rights and how to access support and legal remedies. (Meekosha and Soldatic 1383-1399).

By amplifying the voices of persons with disabilities, grassroots movements have played a vital role in raising awareness of their needs and rights, and in compelling governments to develop and enforce more inclusive laws and policies. With the crucial awareness-raising efforts of activists and NGOs, it became imperative for governments to implement a new framework of rules, regulations, and policies. The United Nations declared the year 1981 as the International Year of the Disabled Persons, as a result of which, the last two decades of the twentieth century saw a rise in the enactment of several critical disability policies and regulations in the above mentioned countries. Pakistan promulgated the 1981 Disabled Persons' (Employment and Rehabilitation) Ordinance, which worked towards protection of rights of persons with disabilities and provision of medical care, education, training, employment, and rehabilitation to disabled people. The Mental Health Act of India (1987) (MHA), "consolidates and amends the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and matters connected therewith and incidental thereto" (Mental Health Act of 1987). Bangladesh's National Education Policy of 1986 emphasised on the importance of inclusive education in the country (National Education Policy). The benchmark Persons with Disability Act, 1995 of India recognized the importance of equal opportunities, full participation, and social integration for individuals with disabilities (Disability Act of 1995). The 1995 National Disability Policy of Bangladesh and Sri Lanka's Protection of Rights of Persons with Disabilities Act No. 28 of 1996 were enacted to improve the condition of persons with disabilities.

During the twentieth century South Asia introduced disability laws and policies which displayed progressive thinking through strong formulations about disabled rights obligations of the state. Reality on the ground proved antagonistic to legal regulations because policy execution delivered mainly negative results. Multiple barriers including poor administrative operations combined with insufficient payment and social discrimination prevented these policies from achieving their goals effectively. The 1995 Persons with Disabilities Act of India faced serious shortcomings because of deficient implementation processes coupled with administrative resistance. Reports confirmed that reservations which required the government to assign 3% of all positions to disabled applicants remained vacant according to official records. According to a 2015 study by the National Centre for Promotion of Employment for Disabled People (NCPEDP), "only 0.54% of government employees in India were persons with disabilities" (National Centre for Promotion of Employment for Disabled People 2015). Under the 1981 Disabled Persons' (Employment and Rehabilitation) Ordinance of Pakistan the law specified a 2% employment quota for PWDs in public and private sector jobs but this obligation was not followed in practice. According to the 2018 Human Rights Commission of Pakistan (HRCP) report public sector employment among people with disabilities reached only 0.3% levels (Human Rights Commission of Pakistan 2018). Understanding the situation in 2010 revealed that Pakistan operated only a small number of operational vocational training centers which were primarily located in urban areas thus denying rural disabled people their necessary support (British Council 2014). A widespread disregard towards proper implementation of legal laws and policies concerning disabilities have been observed across these countries. Moreover, despite the efforts of disability rights activists and organisations in creating awareness, deeply rooted cultural and religious attitudes often viewed disability as a personal misfortune rather than a social rights issue, leading to institutional neglect and limited public support. According to Jennifer L. Baldwin:

Organizations serving people with disabilities are increasingly promoting what is referred to as a rights-based approach to disability. Yet, little attention has been paid to the ways in which international discourse

and health policy on disability and rehabilitation impact the program design, implementation, and everyday work of organizations addressing disability. Further, there is little understanding of if, how, and why local disability organizations appropriate and transform this discourse; formulating local definitions of disability, disability rights, and citizenship. (Baldwin 13)

The 21st century marks a critical turning point in the South Asian disability rights movement. On December 13, 2006, the General Assembly of the United Nations adopted UNCRPD and it was opened for signatures on March 30, 2007. According to Arnab Bose, “The purpose of the UNCRPD was to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. This new convention was not intended to create any new rights or entitlements. What it did however, was to express existing rights in a manner that addressed the needs and the situation of PWDs. The other benefit of this new convention was that once it came into force, a Committee would monitor its implementation. Countries that ratified the Convention would need to report regularly on their progress to the Committee” (Bose 9). With the coming into force of the UNCRPD, a paradigm shift towards a rights-based approach has been observed. The countries have responded to the convention on different levels, including revising legal frameworks, implementing policy changes, and an immersive promotion of activism to improve the lives of persons with disabilities. While the advocacy for a rights-based approach towards disability began at an advanced stage of the 20th century, the adoption of the UNCRPD marks a significant milestone, focussing the discourse from a welfare-based approach to a rights-based framework.

Moreover, globalization and digital activism in the 21st century have enabled the disabled community to amplify their voices, connect with international disability rights organizations, and push for legal and societal reforms. The UNCRPD's emphasis on accessibility, inclusion, and participation has significantly influenced the discourse and practice of disability rights in the region. Key principles, such as equality and non-discrimination have provided a framework for legislative reforms and policy development which recognises “that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law” (United Nations, “Article 5”). The Convention also emphasises on accessibility “to enable persons with disabilities to live independently and participate fully in all aspects of life [by taking] appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas” (United Nations, “Article 9”). The right to education recognises the right to education for all persons with disabilities “without discrimination and on the basis of equal opportunity” (United Nations, “Article 24”).

India became one of the earliest countries to sign the Convention on the very day it was opened for signatures. It ratified the UNCRPD on October 1, 2007. The country made a landmark move to show its dedication for adapting national policies to international standards for disability rights. The government of Bangladesh officially approved the Convention on November 30, 2007. Pakistan became a party to the UNCRPD on September 25, 2008 for enhancing disability rights and socio-economic conditions to enhance mainstream integration of disabled individuals. Sri Lanka became the last amongst the above mentioned countries to ratify this Convention. While Sri Lanka became the signatory on March 30, 2007, it did not ratify the Convention until February 8, 2016. The reason for this postponement could be the absence of strong political will and commitment to prioritize disability rights legislation.

The ratification of the UNCRPD by the countries under discussion has significantly influenced their respective disability rights movements. There has been a notable increase in discourses and awareness surrounding disability rights in these countries. Civil society organizations and disability activists leveraged the UNCRPD to push for comprehensive legislative reforms. Substantial progress has been made in the development of numerous policies pertaining to disability. Furthermore, several pre-existing governmental policies and initiatives have been amended to enhance the quality of life for individuals with disabilities. In 2016, India replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 with the Rights of Persons with Disabilities Act (RPwD), 2016 to expand

the recognized categories of disabilities from 7 to 21, including cerebral palsy, dwarfism, muscular dystrophy, hard of hearing, speech and language disability, acid attack victims, specific learning disabilities, autism spectrum disorders, chronic neurological disorders such as multiple sclerosis and Parkinson's disease, blood disorders such as haemophilia, thalassemia, and sickle cell anaemia, and multiple disabilities (India, RPwD). The Act came into force on April 19, 2017 with the objective "to ensure that all persons with disabilities can lead their lives with dignity, without discrimination and with equal opportunities. The Act lays down specific provisions to uphold such rights. It incorporates the rights of persons with disabilities covered under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)" (National Human Rights Commission). This Act resonates the UNCRPD's emphasis on equality, dignified life, inclusivity and non-discrimination. Section 3(1) of the RPwD Act states that the government must ensure that persons with disabilities enjoy the right to equality, life with dignity and respect for their integrity. Section 7(2) of the Act, safeguards people with disabilities against any act of abuse, violence, or exploitation. Section 32 obligates all government institutions of higher education and those receiving aid from the government to reserve a minimum of 5% seats in admissions for individuals with benchmark disabilities (Section 32). The Act also ensures that all government establishments must provide a 4% reservation in employment for individuals with benchmark disabilities, with proportional quotas designated for diverse disability categories (Section 34).

In 2017, the Government of India promulgated the Mental Healthcare Act to make mental health care a right of all individuals in India. In its introduction, the MHCA ensures "to protect, promote and fulfill the rights of such persons during the delivery of mental healthcare and services and for matters connected therewith or incidental thereto" (Mental Healthcare Act). Reflecting on the key highlights of this Act, Suresh Bada Math et. al. state:

The act seeks to ensure that mental healthcare facilities are available to all. Those below the poverty line, whether in possession of BPL (below poverty line) card or not, the destitute, and the homeless will be entitled to free mental health treatment. The act provides the right to confidentiality and protection from cruel, inhumane, and degrading treatment, in addition to the right to live in a community and avail free legal aid. It bans electroconvulsive therapy (ECT) without anesthesia and any type of ECT to children and restricts psychosurgery. (Math et al.)

On October 9, 2013, the government of Bangladesh enacted the Rights and Protection of Persons with Disability Act, which superseded the previous Disability Welfare Act of 2001 (Bangladesh, Rights and Protection of Persons with Disabilities Act). The Act emphasises on offering support to children with disabilities and their families to support their needs. This legislation represents a shift from a welfare-based to a rights-based approach in addressing the needs of persons with disabilities in the country. The enactment of this Act could be seen as the result of notable advocacy efforts by human rights activists, civil society, Disabled Peoples' Organizations. Bangladesh's commitment as a signatory to the UNCRPD also acted as a catalyst in passing this Act. It offers a new framework for the rights of persons with disabilities by both establishing these rights and mandating the formation of regional and national committees to ensure their protection. The non-discrimination legislation of this Act fosters much required equity and access to opportunities and resources. It also plays a crucial role in enabling the families of children with disabilities to advocate their rights and pressurise the government in providing the assured services. A number of steps have also been taken by the government of Bangladesh in the domain of education like the National Education Policy 2010, initiatives like PEDP III and IV which focus on providing primary and inclusive education to children with disabilities. According to the 2021 UNICEF report, *Disability-Inclusive Education Practices in Bangladesh*, 83 percent of children with disabilities aged 5–17 years attended school as per MICS 2019. Furthermore, "In secondary education, the net enrolment rate for girls remained steadily higher than that of boys from 2011 to 2019 (50 per cent in 2011 to 73 per cent in 2019 for girls and 43 percent in 2011 to 62 percent in 2019 for boys)" (UNICEF 48).

After the ratification of the UNCRPD, Pakistan also took some measures to bring persons with disabilities to the centre from the margins. In 2020, ICT Rights of Persons with Disability Act was enacted to promote and protect the rights of individuals with disabilities within the Islamabad Capital Territory (ICT) (Pakistan,

ICT Rights). This legislation prohibits discrimination on the basis of disability and ensures the right of persons with disabilities to be respected for their individual dignity so that they lead a decent life with equal opportunities (Part II, Section 4). The Act guarantees equal access to education and healthcare, non-discriminatory employment opportunities, social protection programs, and accessible environments, transportation, and thereby, emphasizing the inclusion and participation of individuals with disabilities in all aspects of society (Part II, Sections 16, 19, 30). Further, it creates a Special Disability Court to address violations of these rights, encompassing key areas such as education, healthcare, employment, social protection, accessibility, and participation (Part III, Section 32).

Sri Lanka ratified the UNCRPD in 2016. Prior to this, the country adopted the National Policy on Disability in 2003, drafted a National Policy on Inclusive Education in 2009 and launched the Framework of Action for Inclusive Education the same year. Post-ratification, the country developed the Inclusive Education Plan 2019–2030 in 2019. In a 2019 report submitted by Sri Lanka to the UNCRPD committee, the country presented the final draft of the National Action Plan for Disability with a “design for implementation of seven thematic areas namely, Empowerment, Health and Rehabilitation, Education, Work and Employment, Mainstreaming and Enabling Environments, Data and Research and Social Institutional Cohesion”. It further states that “nearly Rs. 65 billion had been allocated by the Government in the Medium Term Budgetary Framework 2014 - 2016 for the implementation of the Government Policy Framework on empowering the differently able community and mobilizing them as an equally useful segment of the society” (United Nations 12). Sri Lanka also introduced the 2014-2018 National Guidelines for Rehabilitation Services “ to provide rehabilitation information on structure, process, content and networking for policy planners and programme implementers to provide better sustainable rehabilitation health service for PwDs in the country” (United Nations 12).

Despite the adoption of a rights-based approach to disability post-UNCRPD ratification, the actual implementation of disability laws and policies remains a significant challenge. While legislative frameworks have improved, the ground realities still indicate persistent gaps in enforcement, social attitudes, and institutional mechanisms. The concept of charity still plays a significant role in South Asian religio-cultural groups towards persons with disabilities. Most religions instruct their followers to treat persons with disabilities with charity. Such religious beliefs and charitable attitude emphasise on the stigma associated with disabled individuals. There is still a lack of robust implementation of institutional framework. For instance, even after outlining comprehensive measures for inclusion in the Disability Rights and Protection Act of 2013 of Bangladesh, many provisions remain under-implemented. Aleya Akter and Md Mizanur Rahman, in their article, “Women with Disabilities in Bangladesh: Accessibility in the Built Environment” argue that “it was complicated for Women with Disabilities to get access to public and private transport since those were not accessible and not meant for disabled people. Therefore, more than 60% of respondents could not use the bus as the buses were not accessible by wheelchair. The means of transport that the respondents availed found that most of them were using rickshaws for travelling close distances with family members' and friends' help. Simultaneously, they depended on trains and buses for traveling far distances though those were not also disabled accessible” (Aktar and Rahman 5). The rural-urban disparity also remains a major issue. While initiatives for the upliftment and inclusion of persons with disabilities are seen to be implemented at a higher pace in urban areas, rural areas are virtually left out of the picture. To bridge the gap between policy and practice, these countries must adopt a multi-faceted approach that promotes awareness, emphasises on accountability, increases financial commitment, addresses urban-rural divide, improves data collection, and empowers disability leadership. Increasing accountability is crucial, and this can be achieved by establishing dedicated departments or bodies for policy enforcement which are responsible for keeping a close eye on compliance with disability laws. Additionally, introducing penalties for non-compliance and conducting regular audits of public facilities will ensure that accessibility standards are met. Financial commitment is another key factor in effective implementation. Governments must allocate adequate resources to initiatives for disability inclusion and promote public-private partnerships to offer aid to programs aimed at empowering persons with disabilities.

Beyond passing policies on paper, a cultural shift is necessary to dismantle existing biases and misconceptions. Launching public education campaigns can help in raising awareness about disability rights. Another important step in this direction would be integrating disability studies in school curricula which can lead to effectively fostering inclusive attitudes from an early age. Further, urban-rural disparities in disability interventions must be addressed. New programs should be designed specifically for rural communities and accessible infrastructure must be provided in these regions. This will ensure that persons with disabilities have equal opportunities regardless of where they live.

The collection of authentic and reliable statistics requires improvement because they form the basis for well-informed policy decisions. Governments should perform extensive surveys for precise disability statistics followed by the adoption of digital platforms for constructive analysis of their disability inclusion initiatives. The essential development toward substantial progress requires the empowerment of disabled leaders. All policy decisions which impact PWDs need their active involvement and political advocacy must receive support to enhance disability rights defense. A joint approach to implement these proposed methods will create an inclusive rights-based disability framework which ensures proper execution of well-meaning policies.

The South Asian countries have updated their legislation toward disability rights but the execution of these laws across territories remains difficult to achieve. The continuous gaps between disabled rights policies need organizations of policy makers with activists and civil societies to drive societal attitude changes while dedicating sufficient resources and increasing institutional performance while bringing active disabled involvement across all life aspects.

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