

Building Momentum for the  
Disability Rights Legislation in Mauritius  
- Learning from the Indian Experience

**DISABILITY**  
**RIGHTS** *are*  
**HUMAN**   
**RIGHTS**

Prepared for



by



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## BACKGROUND



The UN Convention on the Rights of Persons with Disabilities (CRPD) was ratified by Mauritius in January 2010. One of the obligations contained in the Convention is that a national law should be formulated to guarantee the enjoyment of the rights enumerated in the Convention. There have been several rounds of discussions and promises even been made by the Mauritian Government that a Disability Rights legislation will be formulated. However, there has been little/no progress in translating these promises to concrete action. It has been a decade since the ratification of the CRPD and not even a first draft of the legislation is available in the public domain. Therefore, Global Rainbow Foundation (GRF) has launched a focused campaign to fervently advocate for the Disability Rights Bill to be drafted and passed in the Parliament at the earliest.

This Paper, developed aims to:

- Bring out the importance and urgency for having a domestic legislation for protecting the rights of people with disabilities in Mauritius.
- Document significant developments that have occurred so far in this regard.
- Chronicle the experience in getting the disability rights legislation drafted and enacted in India and its salient features, which could aid in planning the advocacy and drafting of the Bill in Mauritius.
- Provide some recommendations for catalysing the advocacy movement to ensure the enactment of a disability rights law in the country.



## WHY IS THE DISABILITY RIGHTS LEGISLATION REQUIRED IN THE COUNTRY?

Mauritius, as a State Party to the CRPD, is legally bound to enact a domestic law in line with the Convention. Furthermore, the Concluding Observations of the CRPD Committee (2015) has also emphasized on the same.

### Some Statistics<sup>1</sup>

- At the 2011 Population Census, there were 59,868 persons reported as having a disability in the Republic of Mauritius
- The percentage of people with disabilities with no formal education or pre-primary level only was 22.6% and with secondary level education was 23.7% and with university degree or equivalent was mere 0.9%.
- Among the people with disabilities who are 16 years and above, 82.8% are economically inactive, out of which 50% of them have given 'disability' as the reason.

- Apart from the fact that it is an international obligation, there are several reasons why Disability legislation is required in the country. They are:
- Due to the absence of a comprehensive disability rights law in the country, there have been several instances of direct/indirect discrimination, denial of reasonable accommodation and violation of rights of people with disabilities.
- The existing disability legislations, like Training and Employment of Disabled Persons Act 1996, The National Council for Life Rehabilitation of Disabled Persons Act 1986, etc. are neither comprehensive nor rights based. They require amendments to make them compliant with the CRPD.

- The stakeholders do not see it as their duty/responsibility to fulfil the rights of people with disabilities. Most of them still look at disability as a welfare issue rather than as a rights issue and a statutory/mandatory requirement.
- There are no legal provisions for ensuring reasonable accommodation, legal capacity, supported decision making, support services, protection from violence and abuse, inclusive education, rights of women and children, etc. which are crucial for ensuring equality of persons with disabilities.
- Without equal rights, people with disabilities are unable to effectively participate and contribute in social, economic and political development. The country will highly benefit from the as yet untapped economic potential of this growing population.
- Further, legislation will provide the much-needed implementation and reporting mechanisms, like Commissioners for Disability, Special Courts, Constitution of Committees, Annual Reports, Fund allocation and so on.

Hence, the enactment of a Disability Rights legislation, in line with the CRPD, will provide a much-needed policy framework for ensuring the civil-political and socio-economic-cultural rights of people with disabilities in the country.

<sup>1</sup> - 2011 Housing and Population Census Analytical Report Volume VII – Disability, Ministry of Finance and Economic Development

## CURRENT STATUS VIS-A-VIS THE DISABILITY LEGISLATION



This section documents the initiatives taken so far to enact a disability rights law in the country in chronological order:

- **25th September 2007:** Signing of the CRPD by Mauritius.
- **8th January 2010:** Ratification of the CRPD with certain reservations (on Articles 9.2 (d) and (e), Article 11, and Article 24.2 (b)).
- **2010:** Submission of the Initial Report to the CRPD Committee. It was mentioned in the Report that, "Government proposes to introduce a Disability Bill in line with the Convention to provide further protection to persons with disabilities against all forms of discrimination".
- **2012:** Under the Leadership of Former Minister Sheila Bappoo, the then Minister of Social Security who was very committed to implement the CRPD in Mauritius, Barrister Coomara Payendee as a Senior Advisor to the Ministry led a team for the drafting of the Disability Rights Bill which according to him was "almost final". (This draft is, however, not available in the public domain).
- **30th September 2015:** CRPD Committee in their Concluding Observations on the Initial Report recommended strongly that the disability law should be enacted. They emphasized the need to consult with organizations of persons with disabilities in the design, implementation and monitoring of the Disability Bill.

## CURRENT STATUS VIS-A-VIS THE DISABILITY LEGISLATION (CONTINUED)

- **Parliamentary Questions:** Several questions have been raised in the Parliament directed to the Minister of Social Integration, Social Security and National Solidarity (MSISSNS) by various Parliamentarians on the Disability bill from time to time. There answers are given below in brief:
- **12th July 2016:** Mrs. F. Jeewa-Daureeawoo said, "The Ministry has been actively working on the draft Disability Bill. The Attorney General's Office has already given its preliminary vetting in respect of the draft Disability Bill." (The question was posed by the Leader of the Opposition, Mr. P. Bérenger).
- **28th March 2017:** Mr. Etienne Sinatambou said, "The Attorney General's Office gave the unfinalized preliminary draft for official consultations, with Ministries and Departments concerned. Thereafter, the views obtained were submitted to the Attorney General's Office in December 2016 for consideration. On 20 January 2017, a Draft Zero of the Bill was sent to my Ministry by the Attorney General's Office." (question by Mr. A. Ganoo, First Member for Savanne & Black River).
- **14th November 2017:** Mr. Etienne Sinatambou said, "It is expected that the draft Disability Bill will be introduced in the National Assembly around the end of 2018" (question by Mr A. Ganoo, First Member for Savanne & Black River)
- **4th December 2018:** Mr. Etienne Sinatambou said, "The Bill will be introduced before the House next year." (question by Mr V. Baaloomoody, Third Member for GRNW & Port Louis West)
- **14th May 2019:** asked Mr. Etienne Sinatambou said "I had meetings with the State Law Office and there are issues that still need to be addressed. One among them is that the State should make appropriate provisions so that the Government is not liable in case a person suffers from any injury where no proper arrangements have been made in public buildings and public places to accommodate a disabled person or where facilities provided by the State

## CURRENT STATUS VIS-A-VIS THE DISABILITY LEGISLATION (CONTINUED)

are not accessible to the disabled. Once these issues are addressed, I shall submit the draft Bill for the agreement in principle of Cabinet. I expect that the draft Disability Bill will be introduced into the National Assembly before the end of this year.” (question by Mr. P. Armance, First Member for GRNW & Port Louis West).

- **28th July 2020:** Mrs. Jeewa-Daureeawoo said, “There are still a number of issues to be addressed to ensure that we introduce a proper Bill. Following several consultations with the State Law Office, it was found that we may need to amend Sections 3 and 16 of the Constitution so that the fundamental rights and freedom of disabled people are fully respected. It is also worth highlighting that the Bill can only be effective when the necessary preconditions and environment are created for the promotion and protection of the rights of persons with disabilities.” (question by Mr. David, The First Member for Grand River North West and Port Louis West)

## ANALYSIS

Based on the study, the following issues emerge regarding the framing of the Disability Rights Bill in Mauritius:

1. The pace at which the Government is working on enacting a Disability Rights Bill is a cause of concern.
2. The draft Bill, that the Ministry of Social Integration, Social Security and National Solidarity claims to have prepared, is not in the public domain.
3. The Bill has not been drafted in consultation with persons with disabilities/ DPOs and NGOs. This goes against the principles of the CRPD which the country has ratified.

## ANALYSIS (CONTINUED)

4. In a recent answer of the Minister to a question that was asked in the Parliament, she said that the Constitution would be amended before enacting the law. This will delay the Bill further.
5. The advocacy campaign for a disability rights bill by DPOs and NGOs has not led to the desired result. The consistency and intensity of the campaign should be enhanced.
6. India’s Disability Rights Law was drafted by a Drafting Committee comprising people with disabilities and their representatives with the support of a legal consultant. There are few provisions that have been added which are specific to the Indian context. A similar Committee could be constituted in Mauritius to draft/ review the Bill.

## RECOMMENDATIONS

- A Committee should be constituted of DPOs, NGOs, disability experts, and select lawyers for the drafting of the Bill.
- Promote advocacy at the highest level (Prime Minister and President’s level) to expedite the work on the Bill.
- DPOs and NGOs should create a multi-pronged approach to build pressure on the Government in this regard (parliamentarians, mainstream and social media, protests, letter/emails bombarding the various policy makers, etc.)

The Concluding Observations by the CRPD has made a strong recommendation in this regard, The Next Country Report (combined second and third periodic reports) was due for submission in February 2020 (which has not yet been done at the time of writing the Report). Mauritius should enact the law at the earliest. This could be added in the Country Report, which then would project our country in a positive light.

## INDIA CASE STUDY - ADVOCACY FOR THE RIGHTS OF PERSONS WITH DISABILITIES ACT IN INDIA



India is one of the countries that has framed a rights-based legislation post the ratification of the CRPD. It required advocacy on the part of DPOs to convince the Government for a new law on disability. Then, it took almost seven years to get the law drafted and tabled in the Parliament. This Section chronicles the advocacy that was carried out to get the Rights of Persons with Disabilities (RPWD) Act, 2016 enacted in the country. The information was taken from DNIS and media reports.

- 30th March 2007: India was amongst the 80 countries that signed their acceptance on the very first day CRPD was opened for signature on 30th March 2007.
- July 2007: National Centre for Promotion of Employment for Disabled People (NCPEDP) a leading policy advocacy organisation, which was

## INDIA CASE STUDY - ADVOCACY FOR THE RIGHTS OF PERSONS WITH DISABILITIES ACT IN INDIA (CONTINUED)

headed by Late Mr. Javed Abidi, held a meeting of DPOs/NGOs and select people from the legal fraternity to discuss and build a consensus around the significance of a speedy ratification of the CRPD. This resulted in a focused campaign to build pressure on the Government to ratify the Convention.

- 1st October 2007: India ratified the CRPD (\*India has not signed/ratified the Optional Protocol).
- In order to meet the obligation to adopt legislative measures for the implementation of the rights recognized in the CRPD, the Government wanted to amend the Persons with Disabilities Act of 1995.
- 2008: NCPEDP had set up a National Committee on Rights of Persons with Disabilities (NCRPD- India), a think tank, composed of leaders representing different disabilities, regions and professionals, to promote the implementation of the CRPD.
- 25th July 2009: In a meeting of the NCRPD, the members felt that it would be an impossible task to amend the 1995 Act as hundreds of amendments would be required to make it compliant with the CRPD and that the sector should demand a comprehensive new law on disability rights.
- 29th August 2009: A delegation led by Late Mr. Javed Abidi met with Mr. Mukul Wasnik, the then Minister of Social Justice and Empowerment and submitted a detailed letter apprising the Minister about the lacunae in the proposed amendments and the need for a new law. The Minister conceded that there were indeed more than a hundred amendments and it was necessary to make a new law instead.
- October 2009: When there was no positive action on the part of the Ministry, a campaign was launched with a one-point agenda, "No to

## INDIA CASE STUDY - ADVOCACY FOR THE RIGHTS OF PERSONS WITH DISABILITIES ACT IN INDIA (CONTINUED)

Amendments and Yes to New Law". A National Consultation was organised by NCPEDP on 29th October to take the debate to the larger platform and to build a consensus on the demand for a new law.

- 30th April 2010: The Minister constituted a Committee to draft the new Bill which would replace the 1995 Act. Dr. Sudha Kaul, Executive Director, Indian Institute of Cerebral Palsy, Kolkata, was appointed the Chairperson of the Committee. The 27-member Committee had only 3 people with disabilities! After a candlelight vigil and a hunger strike, a few more disabled leaders were added to the Committee. Constant pressure was kept on the Committee to increase the speed of their work (the first meeting of the Committee took place 40 days after the constitution of the Committee).
- 2nd August 2010: The Centre for Disability Studies, NALSAR, University of Law Hyderabad was appointed as Legal Consultants.
- DPOs continued to keep the pressure on the Committee by giving their feedback and suggestions on various drafts of the Bill.
- The Drafting Committee held several meetings and organized National Consultation and State Consultations to seek the views of stakeholders.
- 30th June 2011: The Committee submitted the first draft to the Ministry of Social Justice and Empowerment.
- November 2011: There were certain disagreements within the sector regarding certain aspects of the Bill drafted by the Committee. The National Advisory Council (NAC), an advisory body to advise the then Prime Minister of India, set up a sub group to engage with various views and try to narrow down the disagreements to the extent feasible, so that a strong and consensual law for the rights of persons with disabilities emerges. The Working Group held two meetings in November 2011 and submitted their recommendations.

## INDIA CASE STUDY - ADVOCACY FOR THE RIGHTS OF PERSONS WITH DISABILITIES ACT IN INDIA (CONTINUED)

- 2012 -2014: The Ministry then drafted the Bill based on the recommendations made by the Drafting Committee and NAC. The drafted Bill was sent to other Ministries for feedback. Based on the feedback received, modifications were made to the Bill. The Rights of Persons with Disabilities Bill, 2013 was then sent to the Cabinet for approval. (The whole process at this stage was not transparent. The final copy of the Bill was not made available in the public domain.) NCRPD and other DPOs kept the pressure on the Government to table the Bill.
- January 2014: A copy of the Bill was leaked and reached the hands of DPOs. It was highly diluted compared to the Bill drafted by the Committee. The sector was divided. Some activists wanted the Bill to be scrapped. Few others felt that Bill has reached this stage after many years of advocacy and it should not be scrapped. A group was formed in Delhi of disability leaders who reviewed the Bill and made some recommendations for its amendments.
- 7th February 2014: The Rights of Persons with Disabilities Bill 2014 was introduced in Rajya Sabha. About 16 amendments were made to the Bill. There was a strong campaign to stop the Bill from passing. The Bill was referred to the Standing Committee on Social Justice and Empowerment (Chairperson: Ramesh Bais).
- 5th May 2015: The Standing Committee consulted with NGOs and DPOs and finalized their recommendations on 5th May, 2015.
- 2015 -16: The pressure was kept on the Government through letters, rallies, meetings with the leaders in the Government and social media campaigns to introduce the Bill in the Parliament.
- December 2016: Finally the Bill was tabled in the Lok Sabha (Lower House of the Parliament) in the winter session. There were some improvements

## INDIA CASE STUDY - ADVOCACY FOR THE RIGHTS OF PERSONS WITH DISABILITIES ACT IN INDIA (CONTINUED)

in the Bill but there was also some further dilution. The disability sector was again divided in their views. NCPEDP and a few other leaders felt that there can be no perfect Bill. It has been seven years since the work had started. Many felt that the present Bill was a vast improvement over the 1995 Act and that it should be passed without further delay. A few activists, however, did not agree with this view and did not want the Bill to be passed. NCRPD members, who were keen that the Bill be passed, planned a focussed campaign which included making awareness videos, twitter campaigns, rallies, meetings with leaders of the Ruling and Opposition parties, Members of Parliaments etc.

- 14th December 2016: The Bill was passed in Lok Sabha on 14th December 2016
- 16 December 2016: The Bill was passed by the Rajya Sabha (Upper House of the Parliament) on 16 December 2016 and received the President's assent on 27 December 2016.



## SALIENT FEATURES OF THE RIGHTS OF PERSONS WITH DISABILITIES (RPWD) Act, 2016

- The RPWD Act has adopted the CRPD definition of disability. Further, it has added two more definitions, i.e. persons with benchmark disabilities and persons with high support needs. Specific provisions such as reservations, allowances etc. have been provided for them. The disability categories covered under benchmark disabilities were increased from seven (in 1995 Act) to 21 categories (in 2016 Act). The categories covered are leprosy cured persons, cerebral palsy, dwarfism, muscular dystrophy, acid attack victims, blindness, low vision, deafness, hard of hearing, speech and language disabilities, intellectual disabilities, specific learning disabilities, autism, mental illnesses, multiple sclerosis, Parkinson's disease, blood disorders and multiple disabilities.
- The Act provides for equality and non-discrimination in all aspects of life. It mandates that people with disabilities should not be discriminated against on the grounds of disability. The term 'discrimination' has been defined to encompass direct, indirect and denial of reasonable accommodation.
- The Act provides for various human rights and makes the concerned authorities responsible for providing the means and mechanisms by which people with disabilities can exercise their rights effectively. According to the Act, people with disabilities have the right to:
  - Home and Family
  - Community Life
  - Protection from cruelty and inhuman treatment
  - Protection from abuse, violence and exploitation
  - Protection and safety
  - Reproductive rights
  - Accessibility in voting

## **SALIENT FEATURES OF THE RIGHTS OF PERSONS WITH DISABILITIES (RPWD) ACT, 2016 (CONTINUED)**

- Access to justice
- Legal capacity, access to support and limited guardianship
- The Act requires the Government to take measures to ensure Women and Children with Disabilities enjoy their rights equally with others.
- There are several provisions to ensure accessibility of the built environment, transportation, information, communication, products and services. It provides timelines - all existing public buildings (including those owned privately) should be made accessible in five years' time (by June 2022) and all services (including private service providers) should make their services accessible within two years' time (by June 2019). The law states that new buildings will not be issued occupation certificates if they do not adhere to standards. It requires electronic media to have closed captioning, sign language and audio descriptions. The definition of communication has been expanded to include various forms of communication (sign language, Braille, large print, human reader, augmentative and alternative mode of communication etc.).
- The Act lists duties for all recognised educational institutions. They must not deny admission, should provide barrier free environment, reasonable accommodation, individualised support, transportation facilities to children and attendants. Education must be provided in the most appropriate mode. Further, it requires the setting up of resource centres, training of teachers/professionals, conducting a survey in schools, appointing teachers with disabilities, providing scholarships, making modification in curriculum and exam system, conducting research, etc. The law provides 5% reservation in educational institutions (that are government owned or aided) for students with benchmark disabilities.
- The law requires all establishments (public and private) to publish a Equal Opportunity Policy and register it with the Disability Commissioner.

## **SALIENT FEATURES OF THE RIGHTS OF PERSONS WITH DISABILITIES (RPWD) ACT, 2016 (CONTINUED)**

- It requires establishments to maintain a record of employees with disabilities and set up a grievance redressal mechanism.
- The Act provides for 4% reservation in the Government and Public Sector jobs to people with following disabilities - blindness, low vision, deaf, hard of hearing, cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy, autism, intellectual disability, specific learning disability and mental illness and multiple disabilities.
- There are specific provisions to promote skill development and self-employment. It provides for inclusion of persons with disability in all mainstream vocational and skill training schemes and programmes, development of exclusive programmes for those with developmental disabilities and provision of loans at concessional rates and marketing support.
- The Act requires the Government to formulate schemes and programmes for an adequate standard of living. It states that the quantum of assistance to persons with disabilities under such schemes and programmes shall be at least twenty-five per cent higher than the similar schemes applicable to others. The Act provides for access to safe drinking water, accessible sanitation facilities; disability pension, unemployment allowance, care-giver allowance, a comprehensive insurance scheme, aids and appliances and surgeries free of cost, etc. There is 5% reservation in poverty alleviation, developmental schemes and allotment of land at concessional rates.
- The Act provides for free healthcare in the vicinity, barrier-free access, screening of all children, training to the staff, organising awareness campaigns and access to sexual and reproductive healthcare, etc.
- There are specific provisions for making sports, recreation and culture

## SALIENT FEATURES OF THE RIGHTS OF PERSONS WITH DISABILITIES (RPWD) ACT, 2016 (CONTINUED)

accessible for people with disabilities to enable them to learn, participate, pursue and enjoy.

- The law requires concerned authorities to conduct/promote awareness programmes for schools/ colleges/universities teachers and staff members, employers, administrators, co-workers, Panchayati Raj Members, legislators, administrators, police officials, judges and lawyers. It requires the inclusion of disability as a study component in curricula for all relevant educational courses.
- There are implementation and monitoring mechanisms provided i.e. the appointment of Central and State Commissioners of Persons with Disabilities (with experience in the field of disability), setting up of State and Central Advisory Boards (with appropriate representation of people with disabilities), expert committee, designation of Special Courts, setting up of National and State Funds etc.
- There is a chapter on offences and penalties, where punishments (fines and imprisonment) are prescribed for individuals and organisations violating the provisions of the Act.



## SHORTFALLS IN THE INDIAN ACT



The RPWD Act has certain shortcomings, some of which, are listed below:

- There is a sub clause in the Act that allows discrimination on the grounds of disability if it is done to achieve a legitimate aim.
- The phrase “within the limit of its economic capacity and development” is used in certain Sections, which provides the Government an excuse for not providing certain services such as access to rehabilitation, social security measures etc.
- Reservation in employment is not provided for all people with benchmark disabilities. Moreover, the reservation is only 4% (the earlier versions of the Act provided for 5%).
- There are provisions for women with disabilities but there are no specific provisions for LGBTQ+ with disabilities.

## SHORTFALLS IN THE INDIAN ACT (CONTINUED)

- The role and the power of the Central and State Commissioner is same as the earlier Act. They only have recommendatory power.
- There are several other points where the wordings could have been stronger and more decisive, timelines could have been added and where cross disability aspects could have been emphasised.



## REFERENCES

Interview, E-mails and information received from Mr. Armoogum Parsuramen and Shyama Ramsamy of Global Rainbow Foundation (GRF)

Information from following websites and documents:

List of issues in relation to the initial report of Mauritius accessed at <https://www.refworld.org/publisher,CRPD,COUNTRYREP,MUS,55c8785e16,0.html>

Page 9, Consideration of reports submitted by States parties under article 35 of the Convention Initial reports of State parties due in 2010.

Concluding observations on the initial report of Mauritius (30th September 2015) accessed at <https://digitallibrary.un.org/record/811093?ln=en>

Mauritius by Ashwanee Budoo and Roopanand Amar Mahadew <http://www.saflii.org/za/journals/ADRY/2014/11.pdf> - Q and A format

Petition : Enact the Disability Bill in Mauritius by 2017, <https://www.change.org/p/ministry-of-social-security-national-solidarity-and-reform-institutions-enact-the-disability-bill-in-mauritius-by-2017>

Parliamentary questions on Disability Bill sent by GRF to DEOC by mail.

The Rights of Persons with Disabilities Bill, 2011, Presented by Committee appointed by Ministry of Social Justice and Empowerment, accessed at [http://www.internationalcentregoa.com/pdf/The\\_Rights\\_of\\_Persons\\_with\\_Disabilities\\_Bill2011.pdf](http://www.internationalcentregoa.com/pdf/The_Rights_of_Persons_with_Disabilities_Bill2011.pdf)

Disability News and Information Service of NCPEDP accessed at <https://www.dnis.org/>





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