

## INTRODUCTION

The island nation of Sri Lanka with its diverse population, Persons with Disabilities (PwD's) is a considerable part. The census of population carried out by the Department of Census and Statistics (DCS) in 2011 records 8.7% of the total population as PwDs but significant concerns remain regarding the definition and criteria for identifying and capturing PwDs during the census. Though disability is an evolving concept, legislative definition of PwDs emphasizes their dependency, highlighting insensitivity towards disability. Thus, policy pronouncements notwithstanding, persons with intellectual disabilities, and those with severe disabilities are frequently denied enjoyment of their most fundamental human rights and participation in society.

PwD's have been consistently marginalized in the Sri Lankan polity due to the absence of a rights-based approach. They are denied opportunities to participate effectively in the public realm. The denial is implicit from the view of a common abled-man, citing reasons of the need to allocate state resources and revamp the existing structure. However, viewing from the lens of an average disabled person, this necessarily amounts to the denial of a fundamental right of the PwD, pervading culture and attitudes, which perceive disability as a penance for past sins and a burden, influence the dominant charity-based discourse on matters relating to PwDs.

The attitudinal barriers play a major role in stagnation of policies and regulations. They further frustrate the accessibility, inclusivity and participation of PwDs in different spheres such as education, employment, transportation etc. Marginalization of the PwDs is multiplied where inter-sectional ties operate, namely gender, ethnicity, geographical location, social and economic status. For instance, PwDs residing in the estate sector in the central uplands, already amongst areas with the most entrenched poverty and exclusion, face extreme difficulties in accessing the services provided by the state due to low levels of literacy, economic and social disadvantages.

Despite almost ten-year period needed for the ratification, the progress since becoming a signatory has largely been dismal. Matters pertaining to the PwDs have failed to break away from the 'social' and 'welfare' aspects and remain subordinate to the larger branch of social service. The disappointment resulting from the developments in the post-signatory period casts a reasonable doubt on the state's commitment to implement the convention. It is important at this juncture to capitalize on the opportunity to produce a comprehensive right based framework.

In this backdrop, an insight into the state of affairs of the PwDs in the post- signatory stage is warranted at this instance. Sri Lanka was one of the few countries that placed its signature as early as 2007, supposedly indicating the state's commitment to uphold the rights of PwDs. Being obliged to refrain from acts that defeat the purpose of the convention, the state ought to have worked on creating the groundwork to establish a rights-based approach in the country.

However, the orthodox institutional setup of the state did not change and continued to be regressive, defeating the very purpose of the convention. Attempts to embody the principles of the convention in the national framework such as the national policy and accessibility regulations could not reach far in terms of implementation, because of massive procedural, conventional and prejudicial impediments in the polity.

## 1. DISABILITY RIGHTS AND NATIONAL LEGISLATION

### 1.1. International Legal Structure

Government of Sri Lanka (GoSL) signed the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) on 30 March 2007 and ratified on 08 February 2016, after a lapse of almost 10 years.<sup>1</sup> Thus, GoSL international legal obligation toward UNCRPD came to force with effect from 09 March 2016.<sup>2</sup>

Although the GoSL is a state party to the UNCRPD, it is yet to accede to the Optional Protocol which provides any individual or group of individuals to communicate with Committee on Rights of Persons with Disabilities (CRPD) when redress is denied for violation of their rights.<sup>3</sup>

***Recommendation:*** Immediate action should be taken by the government for accession to the Optional Protocol.

### 1.2. National Legislation

Protection of the Rights of Persons with Disabilities Act No. 28 of 1996 (herein after referred as Act No 28 of 1996) specifically address equality in recruitment for employment and admission to educational institutes and for physical accessibility to public places but it does not have provisions to safeguard rights of persons with disabilities.<sup>4</sup> Therefore, a new draft Disability Rights Bill (DRB 2006) prepared and was approved by the Cabinet of Ministers in 2008. However, the DRB 2006 was subjected for amendments more than five times but never reached the parliament to be adopted as national law for the last ten years.<sup>5</sup> Although DRB 2006 was redrafted again in 2016 (RDRB 2016) and was submitted to the Legal Draftsman Department, it is also not in compliance with the Article 33 of the UNCRPD.<sup>6</sup> The draft is subjected to the strong criticism by the disabled community due to the unavailability of a strong state coordination mechanism and an independent monitoring mechanism. Since GoSL is now a state party to the UNCRPD, it is the duty of the state to amend the draft in accordance with Article 33 of the Convention.<sup>7</sup>

***Recommendation:*** The Disability Rights bill (DRB) should have the provisions to establish two strong institutions namely for state coordination and independent monitoring. The DRB should be prepared in compliance with UNCRPD. The bill should have provisions to separate functions of the state implementation coordination mechanisms and independent implementation monitoring mechanism as per Article 33. Speedy arrangement should be made by the GoSL to enact the DRB in the Parliament without any further delay.

*It is suggested that an independent Disability Rights Commission to be established with required financial and human resources, where members are appointed by His Excellency the President followed by approval of the Constitutional Council.*

## 2. CIVIL AND POLITICAL RIGHTS

### 2.1. Equal Recognition Before the Law

Persons with disabilities face enormous challenges when they seek legal redress as well as when required to give evidence before the law. Persons with disabilities experience multiple discrimination as and when they need to communicate within the courts system due to lack of alternate communication methods and mediums and when they need physical access to court premises in the process of seek justice. This difficulty is severe among the deaf or persons with hearing impairments as well as for persons with intellectual disabilities.<sup>8</sup>

***Recommendation:*** *The government should take immediate action to educate all sections in the judicial system as well as the general public. GoSL must ensure and take appropriate measures to continuously monitor and make sure the laws that exist for equality are efficiently implemented.*<sup>9</sup>

### 2.2. Freedom of Expression, Opinion and Access to Information

Since the opportunities for persons with disabilities to access information and communication are hardly available, their freedom of expression and right to information are violated.<sup>10</sup> Although the government is duty bound to provide information using alternate communication means used by persons with disabilities,<sup>11</sup> the respective special provisions are not available, causing the issue to be even more severe.<sup>12</sup> Some existing legal provisions may even prevent PwD's their right to access for information.<sup>13</sup>

#### 2.2.1 Communication constraints faced by the deaf community

Rights of the deaf community to express their views and opinions are severely violated because of severe communication constraints faced by them. They are denied the opportunities to receive various public service announcements including early warning during disasters, healthcare and education etc. Although sign language has been recognized as a language at policy level since 2010,<sup>14</sup> it is yet to be given any legal validity. There is a dire shortage of sign language interpreters in Sri Lanka. At the moment only five sign language interpreters are available, and they are not at all sufficient to provide services to the deaf community of Sri Lanka.<sup>15</sup>

***Recommendations:*** *Action must be taken by the government to provide information through alternative communication media (Sign Language, Braille, larger prints etc.) and making necessary arrangements to provide public information through alternative formats. Furthermore, at least one officer (focal point) who can communicate through sign language should be available in every public and private sector institutions which provide services for persons with disabilities. Government intervention is required to start sign language training courses, maintaining and registering a pool of professional sign language interpreters. It is the responsibility of the state to introduce new assistive technologies which are available for the benefit of persons with disabilities and generate interest among the researchers to seek innovations and technology.*

### 2.3. Discrimination and infringement of equal opportunities

When rights of persons with disabilities are violated, they are constantly subjected to discrimination. The government has not implemented any mechanisms to prevent this situation and it is a violation of human rights.<sup>16</sup>

Examples for infringement of equal opportunities

- a. Government employment opportunities - The Public Administration Circular 27/1988 issued to provide government employment to persons with disabilities stated that the disability would not be a hindrance to the performance of their duties. On one hand, if the government fails to provide required accessible facilities or modification to the work place, prospective persons may not have the possibilities to perform their duties. On the other hand, this is indicating that required physical fitness for public sector employment would be a barrier for applying for the government employment as well as for the selection process.
- b. Opportunities to choose subjects stream for the university admission - In the application form (page No. 213) of blind and differently abled candidates of the hand book for the Admission Undergraduate Courses in the Universities of Sri Lanka (Academic Years 2015/2016), clearly stated that the differently abled applicants are eligible to apply only for courses of study in arts, commerce, physical science and biological science.
- c. Since, the term 'disabled' is not mentioned in Article 12(2) of the Constitution,<sup>17</sup> persons with disabilities are more prone to various types of discriminations.

**Recommendations:** Methodologies for elimination of discrimination and provision of equal opportunities should be developed through the establishment of focal points aimed at eliminating the above in decision making bodies of the government. Revise existing Public Administration Circular No. 27/88, University Admission Guidelines and other related policies, regulations, circulars etc. to ensure equal opportunities to persons with disabilities and prevent further discrimination.

### 2.4. Political Rights, Social Participation and Participation in the Decision-Making Process

There are provisions to safeguard the voting rights of Persons with Disabilities.<sup>18</sup> However, these provisions may violate the fundamental of universal franchise and democratic rights, especially secrecy when casting the vote and obstacles in accessing polling stations.<sup>19</sup> Since PwD's are not properly represented in the decision-making process, their concerns related to fundamental rights, social security needs are not properly and systematically addressed when formulating laws and policies.<sup>20</sup> There are hardly any representatives at local authorities, provincial councils or in Parliament mandated to represent disabled community.<sup>21</sup>

**Recommendations:** *To ensure voting rights of persons with disabilities, the Government should take initiatives to use braille ballot papers as a medium for voting, making polling stations physically accessible, granting the severely disabled the right to vote from place of residence, and ensure the voting rights of persons with intellectual disabilities who can make decisions on their own. System should be introduced to make representation for Persons with disabilities at various levels in the state decision making mechanism. Legal provisions must be made available*

*to ensure that persons with disabilities are elected to local authorities, provincial councils and Parliament to represent the disabled community and their rights.*

## **2.5. Risks and Humanitarian Emergencies**

PwD's are the most vulnerable during an emergency such as risk of natural disaster or a man-made disaster. Sri Lanka has a very comprehensive Disaster Management Act<sup>22</sup> but does not include early warning methods for PwD's as a risk reduction method. The National Policy on Disaster Management has special provisions for vulnerable populations including PwD's.<sup>23</sup> Disability is included in the Community Based Disaster Risk Management component under Sri Lanka Comprehensive Disaster Management Programme.<sup>24</sup> However, it is not visible at community level as the early warnings systems does not inclusive of formats supporting deaf community and the community mapping data excluded the presence of PwD's.

***Recommendations:*** *Persons with disabilities too should be included in the Sri Lanka National Disaster Management Program. Relevant legal provisions should be made available and necessary training should be provided to all stakeholders to deal with PwD's in times of risks and disasters.*

## **3. SOCIAL, ECONOMIC AND CULTURAL RIGHTS**

### **3.1. Health, Habilitation and Rehabilitation**

#### **3.1.1 Promoting health for the benefit of persons with disabilities**

Identification and early detection of disability could minimize the severity of disabilities that may occur prior to, during and after the birth. Though the Government has made interventions the medical sector lacks timely interventions, systematic referrals and follow ups. Public health education programs as well as the general health education curriculum do not include basic disability identification and prevention programs are insufficient.

Access to health services is a challenging task for PwD's due to lack of physical accessibility and non-availability of information non-availability of audio visual communication boards and sign language interpreters even in leading state hospitals. The persons with severe disabilities and other difficulties are expected to wait in long queues for many hours and do not get the required attention.<sup>25</sup> The required facilities are not available in the hospitals to get a reasonable health service for PwDs.

***Recommendations:*** *It is necessary to establish a focal point/ help desk in every hospital in order to provide services to persons with disabilities and minimize the discomfort they have to face in hospitals.*

### 3.1.2 Habilitation programs for persons with disabilities

As there are no systematic habitation programs that require continuous participation and monitoring for children with disabilities from birth, their disabilities can become severe leading to secondary disabilities. The Ministry of Health still has not introduced such habitation programs.

***Recommendations:*** *Children with disabilities must be identified as early as possible and necessary interventions should be made and services should be provided until the time is ready to refer to the next level and should handover the responsibility to the next institution or stakeholder responsible such as early childhood development or elementary educational for continuation of service and interventions. The ministry of health should immediately introduce required habilitation services to PwDs and encourage other stakeholders also to focus on such services.*

## 3.2. Education

### 3.1.1 Obstacles faced by children with disabilities in receiving basic education

According to statistics received from the 2011 census, 34% of children with disabilities in the school attending age do not receive any education whatsoever. Furthermore, it has been reported that 20.3% of the children of primary education age do not receive primary education.<sup>26</sup> Although Sri Lanka is required to act in accordance with Article 24 of the UNCRPD and other international instruments, neither the minimum access nor basic equipment and instruments are available for this purpose.<sup>27</sup>

Despite the pledge that has been made by the government to provide equal opportunities to children with disabilities, the government has failed to implement it sufficiently in practice.<sup>28</sup> Not even the minimum facilities required for the concept of inclusive education accepted worldwide are available in the school's system of Sri Lanka. Proper services and facilities that are key for such children to participate in the learning process do not exist in the country.<sup>29</sup>

***Recommendations:*** *Necessary government intervention and legal provisions must be made to establish the concept of inclusive education, substantially implement integrated education programs and intervened to regularize special residential institutional based school systems.*

### 3.1.2 Hindrances to higher education faced by children with disabilities

Opportunities and minimum facilities required by students with disabilities are not available up to the minimum expected standard in all higher education institutions while they further lack the freedom to choose preferred subject streams. Students with disabilities are expected to study subjects as determined by the education authorities even if they dislike the subject stream.<sup>30</sup> This is a violation of their right to higher education. Furthermore, action has not been taken to make available the learning devices and tools in accessible alternative formats which would help students with disabilities to engage in higher education. Physical accessible facilities available in every higher education institutes are far below the standards and not at all sufficient. Although women indicate considerable progress in higher education (approximately 62% in 2014)<sup>31</sup> in Sri Lanka, women with disabilities opting for higher education is minimal.

***Recommendations:*** *Action must be taken by the authorities to facilitate students to choose subject streams as per their preference, provide learning devices and tools in accessible*

*alternative formats and ensure better access to physical environment as well as information as per the standards in Accessibility Regulations. Special scholarships must be made available to students with disabilities in order to encourage more students to engage in higher education and motivate young girls and women with disabilities already engaged in secondary/higher education to successfully face challenges and complete their studies.*

### **3.3. Vocational Training**

#### **3.3.1 Hindrances faced by persons with disabilities when receiving mainstream vocational training**

The training streams that are offered by the special vocational training centers for PwD's managed by Social Services Department under the Ministry of Social Empowerment and Welfare is not in par with the demands of the current job/labor markets. Furthermore, these training centers do not have adequate facilities sufficient to serve all trainees who wish to receive training.

Limited access to primary & secondary education prevents PwD's to obtain the minimum educational qualifications required to gain entrance to mainstream vocational training facilities. On the other hand, admission of PwD's to state and other non-state vocational training centers is considerably minimal. The reasons for this situation is due to physical inaccessibility, non-availability of accessible or alternative communication facilities and the unavailability of training methodologies in accessible alternative formats to reach out to disabled trainees in vocational training institutes.

***Recommendations:*** *Establish a proper system that includes alternative communication facilities required to include persons with disabilities into mainstream vocational training institutes based on the principles of inclusion. Action must be taken by the state to improve the quality of special training centers and to introduce new vocational training streams based on the preference of persons with disabilities and the market trends/demands. Furthermore, these courses must be designed to be on par with National Vocational Qualifications.*

*For the benefit of candidates who wish to obtain training but do not have the expected minimum qualifications due to limited access for primary/secondary education and as a result of their disability, a special admission methodology based on hands on practical skills must be introduced. All-inclusive disabled friendly environment must be promoted in all vocational training centers, technical colleges, technology schools and other training centers.*

### **3.4. Work and Employment**

#### **3.4.1 Ensuring the right to employment of persons with disabilities**

Within the existing legal provisions PwD's should be provided with equal opportunities for employment.<sup>32</sup> However, this is not practically implemented by the state authorities. According to the census and statistics report of 2012, 70.9% of the persons with disabilities in the employment age do not engage in any economic activity.<sup>33</sup> When filling vacant positions, PwD's are not recruited and denied the opportunities although there is a 3% quota allocated to persons with disabilities when recruiting for government jobs, it is not practiced.<sup>34</sup> Even if PwD's possess the required minimum qualification for a particular job, it is not considered due to their disability.<sup>35</sup> Certain gazette notifications issued by the Public Services Commission from time

to time in order to recruit persons to government sector jobs include certain conditions which violate the right to employment of persons with disabilities.<sup>36</sup> No legal provisions are available to provide persons with disabilities any employment opportunities in the private sector.

***Recommendations:*** *Discrimination against persons with disabilities when recruiting for employment in the public and private sectors must be eliminated. Furthermore, the current 3% quota must be increased at least to 5% and made mandatory to both state and private sectors. Additionally, special provisions should be made available by the government to safeguard the employment rights of persons with disabilities who have been unable to fulfill basic qualifications required for employment due to their disabilities. A Disability Employment Trust should be established through an act of parliament and state and private sector employers who do not comply with the 5% quota allocated for employment of PwD's must be made to contribute an equal amount in gratuity payment to the trust.*

### **3.5. Adequate Life Standard and Social Protection**

Persons with slow mental development as well as persons affected by multiple disabilities face severe legal crises in the lives they lead after losing the protection of their parents.<sup>37</sup> This situation is similarly applicable for elderly persons with disabilities as well as senior citizens when they become restricted with their movements.

***Recommendations:*** Action must be taken by the government to establish a formal system to provide special social security and special social insurance programs should be introduced and implemented for the benefit of those groups. Stringent legal provisions should be made available when parent ship changes to guardianship.

### **3.6. Participation in Cultural Activities, Entertainment**

There are very limited opportunities for persons with disabilities to involve in arts, recreation, religious, cultural and entertainment activities and events to show their talents and to release their hidden potential.

Basically the places of worships such as Buddhists/Hindu temples, churches, mosques etc. have restricted access to persons with disabilities. However, there are only few places which have accessible facilities. The same conditions are applicable to the opportunities for entertainment with restricted access to persons with disabilities.

Regional level awareness and participation of PWD in sports and leisure activities are very limited. One main reason is the lack of regional and rural level sports events and opportunities for them to participate in and the cost of sport materials and instruments. It is also reported that existing sport events organized by the National Sports Council and the National Paralympic Committee have created less opportunities for ordinary PWD since these are platforms for basically ex-service persons who have disability.

***Recommendations:*** *Required actions should be taken by the authorities to ensure that persons with disabilities will have the same right to access to cultural, religious, entertainment, sports and recreation.*



## 4. RIGHTS RELATED TO CROSS CUTTING ISSUES / THEMATIC ISSUES

### 4.1. Accessibility

#### 4.1.1 Non-implementation of regulations on accessibility to assist persons with disabilities

Accessibility Regulation No 01 of 2006 specifies the minimum accessibility standards in Sri Lanka.<sup>38</sup> The accessibility standards were not implemented properly even by the government within the state institutions and state run buildings. Although a ruling has been given by the Supreme Court<sup>39</sup> for the government to implement the regulations, none of the responsible government institutions have taken any action to fully implement it up to now.<sup>40</sup> The NCPD, which is the apex body on disability issues in Sri Lanka and have the mandate to monitor implementation of the regulations. So far it has not taken any measures to intervene or to take legal action against those who violate these regulations. The government too is practicing lackadaisical approach against the perpetrators who violate the order within the state mechanism.

**Recommendations:** *Government should take immediate measures to implement the Accessibility Regulations and take legal action against the violators.*

#### 4.1.2 Constraints faced by persons with disabilities in public transportation services

Though Sri Lanka has comprehensive regulations, public transportation system in Sri Lanka does not support accessibility for PwD's. Lack of accessibility to public transportation can be further elaborated through lack of accessibility to railway stations, train compartments, bus stations and buses as well as the unavailability of accessible public toilet facilities.<sup>41</sup> Although there are legal provisions which stipulate that information must be made available in auditory form for the benefit of blind and sight impaired and that information should be made available in visual form for the benefit of deaf and hearing impaired, these provisions are not implemented.<sup>42</sup> No system or methodology is adopted for the last 10 years to educate drivers and conductors on how to facilitate the needs of PwD's when they are issued their licenses to practice their professions.

**Recommendations:** *The government should have a proper plan of action to create an environment that is conducive for persons with disabilities to use the public transportation system. Furthermore, action must be taken to purchase new train compartments and buses which are comply with accepted accessibility standards<sup>43</sup> when purchasing train compartments and buses in future.*

## 4.2. Women with disabilities

Women with disabilities consisting of 57% of the disability population in the country, face greater risk of abuse due to their sexuality as well as disability. There is no opportunity for women with disability to participate in policy making to ensure their right. They are exposed to multiple discrimination in their daily lives and vulnerable to unreported household discriminations and various physical harassments<sup>44</sup>. Under the post war context, the trend is such that women with disabilities living in the North and East are subjected to greater levels of abuse.

Although women indicate considerable progress in higher education (approximately 62%)<sup>45</sup> in Sri Lanka, women with disabilities opting for higher education are minimal.

Violence against women who have disability and face sexual harassment and sexual exploitation in the home, community, work places and in society at large is at a serious level, with hidden or undiscovered incidents. The gravity of the situation is higher when it comes to women who have intellectual disability and/or are deaf and hard of hearing. Further, legal constraints can be witnessed in terms of giving statements to police, appealing in courts in relation to violence and harassments. Therefore, in general, the legal situation is not conducive to ensure justice for women who have disability, with present laws and their enforcement mechanisms. Another such example is that there is still no legal provision for abortions, in the case of sexual harassments-related pregnancies which ultimately worsen the life status for women who have disability, without any help or expectation. This situation seriously affects women who have intellectual disability, deaf and hard of hearing.

Poor Women with disabilities face more challenges in their livelihoods. Stereotyped attitude of their parents and society in general negatively affects women who have disability when getting involved in mainstream activities. Due to this overall poverty situation, mothers with disabilities face more difficulties which affect their pregnancy, childbirth and caring of child, as a vicious cycle. In addition to this, Women with disabilities receive insufficient opportunities to acquire knowledge and skills in family planning and leading a healthy lifestyle.

There are limited opportunities for Women with disabilities for equal participation and decision making in the family, organizations, civil administration and in the political processes. For an instance, they are even not represented at the National Women Committee which indicated that they have been neglected from the decision making process. Therefore, most district and national level programmes include insufficient focus on the needs, wants and demands of Women with disabilities.

***Recommendations:*** *An authorized decision making committee should be appointed with the representatives of women with disabilities to discuss and review the existing issues encountered by them and come up with plan of actions to be implemented with a suitable time frame.*

*Legal provisions should be made available to allocate representativeness to the local government, provincial councils and parliament to ensure their participation in political decision making process.*

*Required amendments should be made to the existing legislation in order to include representatives of women with disabilities to the National Women Women Committee under CEDAW.*

### 4.3. Children with Disabilities

Programmes carried out by the government to provide education to children with disabilities is not at all sufficient. The programmes, vision, methodologies which were adopted and the updated modern technologies which were utilized during the past 5 decades are at a very weak state. No academic research has been undertaken to improve education levels of children with intellectual deficiencies, hearing impairments etc. The government has neglected children with disabilities in early childhood development as well. Action has not been taken to remove obstacles that hinder equal access to educational opportunities.

According to statistics received from the 2011 census, 34% of children with disabilities in the school attending age do not receive any education whatsoever. Furthermore, it has been reported that 20.3% of the children of primary education age do not receive education.<sup>46</sup> Although Sri Lanka is required to act in accordance with Article 24 of the UNCRPD and other international instruments, neither the minimum access nor basic equipment and instruments are available for this purpose.<sup>47</sup>

Despite the pledge that has been made by the government to provide equal opportunities to children with disabilities, the government has failed to implement it sufficiently in practice.<sup>48</sup> Not even the minimum facilities required for the concept of inclusive education accepted worldwide are available in the school's system of Sri Lanka.

Children with disabilities are ~~get~~ getting limited opportunities to be included in the mainstream children's programmes and activities run both by the state sector and NGOs. These children are not respected and ensured their rights as indicated in the UN Convention on the Rights of the Child (CRC). The level of awareness and understanding of the UN Convention on Rights of the Child and related Sri Lankan legal documents are insufficient among relevant government officers.

There are very limited early childhood care and development Programme opportunities for children with disabilities. Pre-school teachers do not get the required training on inclusive education to include these children into the mainstream programmes. Further, it is noted that opportunities for children with certain types of disability are nonexistent. Children with intellectual disability and deaf and hard of hearing face more challenges in their childhood.

In general, there are very limited opportunities for children with disabilities to involve in the mainstream sports, arts, recreation, religious, cultural and entertainment activities and events to show their talents and to release their hidden potential. Sometime, due to insufficient opportunities to detect disability in early childhood through maternal and child health programmes, the effect of disability may multiply as the child grows older.

Girl child with disabilities (especially intellectual disability) faces more barriers within her family, society and even within rehabilitation centers. These children face more challenges without any direct solutions to overcome the situation.

**Recommendations:** Action must be taken to undertake research that can absorb international experiences, update teacher training, implement disability education linked with qualitative development, taking private schools under the government.

## **Interpretation**

Under Section 18 of the Protection of persons with disabilities Act no. 28 of 1996, a disabled person is defined as 'person with disability means any person who, as a result of any deficiency in his physical or mental capabilities, whether congenital or not, is unable by himself to ensure for himself, wholly or partly, the necessities of life'

Under Article 1 of the UN convention on persons with disabilities, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

According to the law of Sri Lanka, disability is analyzed from a personal point of view. However, in the international convention it is defined in terms of constraints created through the society.

According to the current law, disability is defined as a personal deficiency and therefore the society is not held responsible. Under the definition given by the Convention, society is held accountable since it is considered to have been created as a result of shortcomings of the society. Local laws should be amended to reflect the above.

<sup>1</sup> United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) was adopted by the General Assembly resolution 61/106 of 13 December 2006 and opened for signature at the UN Headquarters on 30 March 2007. Minister of Social Services & Social Welfare has personally attended for the signing ceremony and signed the convention as the 7<sup>th</sup> country in order of appearance.

<sup>2</sup> UNCRPD entered into force on 03 May 2008, on the thirtieth day after the date of the deposit of its twentieth instrument of ratification or accession, in accordance with its Article 45, paragraph 1. As the GoSL has ratified the convention on 08 February 2016 it become binding with effect from 09 March 2016 as per Article 45, paragraph 2.

<sup>3</sup> As per Article 1. (2) of the Optional Protocol, communication cannot received by the Committee on the Rights of Persons with Disabilities if any particular state is not a party to the protocol.

<sup>4</sup> Under Article 23 (1) of the Protection of the Rights of Persons with Disabilities Act No 28 of 1996, Sri Lanka has guaranteed only non-discrimination in recruitment for any employment or office and admission to any educational institution and Article 23 (2) has provisions for physical accessibility for public places for persons with disabilities. Accessible at [http://socialemwelfare.gov.lk/web/images/content\\_image/pdf/legislation/act1996.pdf](http://socialemwelfare.gov.lk/web/images/content_image/pdf/legislation/act1996.pdf)

<sup>5</sup> In 2006, Ministry of Social Welfare and Social Services submitted a draft Disability Rights Bill (DRB 2006) to the legal draftsmen with the approval of cabinet of ministers in February 2006. Attorney General and Legal Draftsmen together agreed to the draft with amendments (DRB 2008) on 10th September 2008 which is in compliance with Article 33 of the UNCRPD. However, the Ministry of Social Welfare had submitted the DRB 2008 with amendments that were largely diluted the rights of PwD's and politicizing the monitoring mechanism in 2009 for approval by National Council for Persons with Disabilities (NCPD) but council members who were Persons with Disabilities had not agreed to the draft as it was amended without following the due consultation process and was not in compliance with Article 33 of UNCRPD. Similarly, the draft bill was amended in 2011, 2012 & 2013 and presented to the NCPD but was never approved as the amendments made were not in compliance with UNCRPD.

<sup>6</sup> In 2014, Disability Organizations Joint Front (DOJF) intervened and raised the matter to the NCPD. As a result, NCPD agreed to redraft the bill based on DRB 2006 in compliance with UNCRPD. The Redrafted DRB (RDRB 2014) was submitted to the NCPD. The NCPD appointed a Consultative Committee comprise of Persons with Disabilities and few experts in the field to scrutiny and make recommendations for RDRB 2014.

<sup>7</sup> Secretary to the Ministry of Social Empowerment and Welfare denied the allegations and added that the ministry is doing its maximum to ensure the rights of PwD's. He states that that there are a few issues and even an independent commission must face the same issues. Activists had pointed out continuously that a single ministry cannot cater to every need and concern of PwD's. This shows the lackadaisical approach by the government of Sri Lanka specially in safeguarding and enhancing disability rights and fulfilling the treaty obligations under the CRPD. (Accessible at <http://www.dailynews.lk/2016/12/19/features/102276>)

<sup>8</sup> A deaf girl was raped by a politician in Kurunegala/Wariyapola. (Accessible at <http://srilankabrief.org/2014/05/sri-lanka-attorney-general-orders-suspects-who-raped-deaf-and-dumb-girl-to-be-freed/>)

<sup>9</sup> Witness Protection Act. (Accessible at [http://www.srilankalaw.lk/gazette/2015\\_pdf/4%20of%202015.pdf](http://www.srilankalaw.lk/gazette/2015_pdf/4%20of%202015.pdf))

<sup>10</sup> Right to information has been recognized under Article 14 A of the Constitution of Sri Lanka through the 19th Amendment. However persons with disabilities who needs alternative formats are been denied their rights as the Right to information act does not include the use of alternative formats. (Accessible at [http://www.media.gov.lk/images/pdf\\_word/2016/12-2016\\_E.pdf](http://www.media.gov.lk/images/pdf_word/2016/12-2016_E.pdf))

<sup>11</sup> Definition of communication under Article 2 of the UNCPRD include languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.

<sup>12</sup> Right to Information Act No 12 of 2016 passed by the Parliament of Sri Lanka. However it does not have provisions to as per Article of 21 of UNCPRD. (Accessible at [http://www.media.gov.lk/images/pdf\\_word/2016/12-2016\\_E.pdf](http://www.media.gov.lk/images/pdf_word/2016/12-2016_E.pdf))

<sup>13</sup> Sri Lanka has ratified the Marrakesh Treaty that facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled. (Accessible at [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto.pdf](https://www.wto.org/english/docs_e/legal_e/04-wto.pdf)) However, the Intellectual Properties Act No 36 of 2003. (Accessible at <https://www.gov.lk/elaws/wordpress/wp-content/uploads/2015/03/IntellectualPropertyActNo.36of2003Sectionsr.pdf>) has provisions for copyrights and preventing reproduction which has to be amended to made provisions in compliance with Marrakesh Treaty.

<sup>14</sup> Cabinet of Ministers has accepted Sign language as a recognized language in Sri Lanka in response to a cabinet paper submitted by Minister of Social Services on 23 September 2010. (Accessible at <http://www.ceylontoday.lk/print20160701CT20161030.php?id=4776>)

<sup>15</sup> The dire shortage of sign language interpreters in Sri Lanka. (Accessible at [http://www.colombopage.com/archive\\_16B/Jul03\\_1467529399CH.php](http://www.colombopage.com/archive_16B/Jul03_1467529399CH.php))

<sup>16</sup> The Sri Lankan constitution guarantees a citizen's right to equal protection and prohibits discrimination on grounds including race, religion, sex and language (Article 12). Not only in this situation PwD's are inequality treated in instances where they are recruited for government jobs and in instances of university admission but had the constitution of Sri Lanka had recognized disability a ground for nondiscrimination the situation would have been much better. (Accessible at <http://www.dailynews.lk/?q=2016/04/02/features/78105>)

<sup>17</sup> *ibid - the Sri Lankan constitution guarantees a citizen's right to equal protection and prohibits discrimination on grounds including race, religion, sex and language (Article 12). Not only in this situation PwD's are inequality treated in instances where they are recruited for government jobs and in instances of university admission but had the constitution of Sri Lanka had recognized disability a ground for nondiscrimination the situation would have been much better. (Accessible at <http://www.dailynews.lk/?q=2016/04/02/features/78105>)*

<sup>18</sup> Physically disabled persons who cannot use public transport modes to reach a polling station to cast his vote can request by applying for special transport facilities form the Returning Officer of the district under Article 83 (4) (d) of Parliamentary Elections Act No 01 of 1981 or Article 82 (4) (d) of Presidential Elections Act No 15 of 1981. However, each time the applicant has to submit a medical certificate to justify the physical disability.

<sup>19</sup> Elections (Special Provisions) Act No 28 of 2011 allows specific disabled voter to have a "accompanying persons", thereby increasing the no pf persons who may know the choice of the voters which should be secret, from two to four persons as the new provision states "accompanied by a person who shall mark the ballot paper od such voter in the matter which directed by the voter in the presence of the Presiding officer and another member of his poling staff...".

<sup>20</sup> Act No 28 of 1996 has the provision for Persons with Disabilities to represent the NCPD. However, there is no proper system to select members for proper representation as councilors are nominated by the Minister in charge of the subject and appointed by the President. There is no criterion for vide representation, and the selection of members to the NCPD is also not transparent.

<sup>21</sup> There are couple of individuals with disabilities who happened to be representatives of the main political parties elected to Provincial Councils but never represent the disabled community. In 2009/2010, one main political party nominated PwD's to the provincial council who are combat casualties released from the military elected as public representative in the Provincial Councils but never represent the mandate of disabled community. In 2015 couple of individuals elected to the parliament from main political parties but never represent the mandate of disabled community.

<sup>22</sup> Sri Lanka Disaster Management Act No 13 of 2015 establish the National Council for Disaster Management (NCDM) where President as the Council Chairman and Prime Minister as Vice Chairman with Opposition Leader & 20 Cabinet of Ministers as well as all Chief Ministers of all Provincial Councils as members of the council members. (Accessible at [http://www.disastermin.gov.lk/web/images/pdf/DMACTNO13\\_E.pdf](http://www.disastermin.gov.lk/web/images/pdf/DMACTNO13_E.pdf))

<sup>23</sup> Sri Lanka National Policy on Disaster Management approved by Council on 28 December 2010 has special provision for PwD's under 13 (c). (Accessible at <http://www.disastermin.gov.lk/web/images/pdf/draft%20dm%20policy.pdf>)

<sup>24</sup> Sri Lanka Comprehensive Disaster Management Programmed 2014-2018 has included disability under Community Based Disaster Risk Management (CBDRM), Page no. 25. (Accessible at <http://www.disastermin.gov.lk/web/images/pdf/slcdmp%20english.pdf>)

<sup>25</sup> Lack of attention in hospitals. (Accessible at <http://www.healthcpc.org/our-services/special-services.html>)

<sup>26</sup> Census of Population & Housing 2012, Department of Census and Statistics Sri Lanka. Page no 136. (Accessible at <http://www.statistics.gov.lk/PopHouSat/CPH2011/Pages/Activities/Reports/FinalReport/FinalReportE.pdf>)

<sup>27</sup> Sri Lanka ratified Child Rights Convention in 1990 and agreed to the World Declaration on Education in Johannesburg 1990 and Salamanca Deceleration in 1994 and Education for All in Dakar 2000. Sri Lanka National Policy on Disability 2003 also has comprehensive section on education at Part 2, Section (IV) page no 25. (Accessible at [http://socialemwelfare.gov.lk/web/images/content\\_image/pdf/legislation/disability\\_policy.pdf](http://socialemwelfare.gov.lk/web/images/content_image/pdf/legislation/disability_policy.pdf))

[http://www.socialemwelfare.gov.lk/web/images/content\\_image/pdf/legislation/disability\\_policy.pdf](http://www.socialemwelfare.gov.lk/web/images/content_image/pdf/legislation/disability_policy.pdf)

<sup>28</sup> Minister of Education pledged education for all by 2015 during the 2011 ECOSOC Annual Ministerial Review, Geneva in July 2011. (Accessible at [http://www.un.org/en/ecosoc/julyhls/pdf11/14general\\_debate\\_sri\\_lanka.pdf](http://www.un.org/en/ecosoc/julyhls/pdf11/14general_debate_sri_lanka.pdf))

<sup>29</sup> Sri Lanka's Invisible Children: The Need for Inclusive Education for Children with Special Needs. (Accessible at <http://www.ips.lk/talkingeconomics/2016/04/25/sri-lankas-invisible-children-the-need-for-inclusive-education-for-children-with-special-needs/>)

<sup>30</sup> University Grant Commission of Sri Lanka Admission to Undergraduate Courses of the Universities (Academic Year 2015/2016) in Sri Lanka, Page no 130. (Accessible at [http://www.ugc.ac.lk/downloads/admissions/Handbook\\_2015\\_2016/ENGLISH%20HANDBOOK%202015-2016.pdf](http://www.ugc.ac.lk/downloads/admissions/Handbook_2015_2016/ENGLISH%20HANDBOOK%202015-2016.pdf))

<sup>31</sup> Detailed undergraduates enrolment of higher educational institutions 2014, Page no page 43. (Accessible at [http://www.ugc.ac.lk/downloads/statistics/stat\\_2014/Chapter%203.pdf](http://www.ugc.ac.lk/downloads/statistics/stat_2014/Chapter%203.pdf))

<sup>32</sup> Article 23 (1) of Protection of the Rights of Persons with Disabilities Act no 28 of 1996. (Accessible at [http://socialemwelfare.gov.lk/web/images/content\\_image/pdf/legislation/act1996.pdf](http://socialemwelfare.gov.lk/web/images/content_image/pdf/legislation/act1996.pdf))

<sup>33</sup> *ibid* - *Census of Population & Housing 2012, Department of Census and Statistics Sri Lanka. Page no 136. (Accessible at <http://www.statistics.gov.lk/PopHouSat/CPH2011/Pages/Activities/Reports/FinalReport/FinalReportE.pdf>)*

<sup>34</sup> Sri Lanka Public Administration Circular No. 27/88 dated 18 August 1988 when filling vacancies to introduce 3% quota for PwD's. This circular was further elaborated by Public Administration Circular No. 01/99 dated 29 January 1999. (Accessible [http://www.pubad.gov.lk/web/eservices/circulars/1999/E/01-1999\(e\).pdf](http://www.pubad.gov.lk/web/eservices/circulars/1999/E/01-1999(e).pdf))

<sup>35</sup> If filled as per the 3% quota there should be 70 PwD's out of 2401 Sri Lanka Admirative Service, 24 PwD's out of 832 Sri Lanka Planning Service, 48 PwD's out of 1600 Sri Lanka Accounting Service, 68 PwD's out of 2283 Sri Lanka Education (Admin) Service etc.

<sup>36</sup> When vacancies in the public sector is announced by Public Survives Commission should promulgate the vacancies in the government gazette. For example, Government gazette 2016/12/09 page no. 2945 it states that the candidate should comply medical standards as well as physical medical requirements which would prevent the Persons with Physical disabilities applying for the post even though the announced post does not require the stated physical standards. It has become a standard in the vacancy announcement of by the Public Services Commission.

<sup>37</sup> The biggest issue faced by the parents of persons with intellectual disabilities and sever disabilities is the caring and guardianship of their loved once after their demise. It is evident that this vulnerable group is more susceptible to abuse and physical harassment by their legal guardians and relatives including own siblings. This is well explained in article 23 of UNCPRD.

<sup>38</sup> Disabled Persons (Accessibility) Regulations, No. 1 of 2006 promulgated under Article 23 (2) of Protection of the Rights of Persons with Disabilities Act No 28 of 1996 to provide minimum accessibility standards for post tsunami constructions. (Accessible at [http://socialemwelfare.gov.lk/web/images/content\\_image/pdf/legislation/act1996.pdf](http://socialemwelfare.gov.lk/web/images/content_image/pdf/legislation/act1996.pdf))

<sup>39</sup> Dr. Ajith Perera's case, the Court, under reference SCFR: 221 / 2009, has ordered several measures to be enforced in the design and construction of all parts of new public buildings and facilities so as to move towards establishing a society that values difference and respects the equality of all human beings, thereby enables everyone. (Accessible at <http://srilankabrief.org/2012/05/imperative-national-need-to-implement-the-supreme-court-order-on-accessibility/>)

<sup>40</sup> Only 2-3% of buildings in Sri Lanka are said to be accessible to the disabled. Reports suggest that a lack of law enforcement might be the cause. Despite more recent legislation for both the public buildings for both the state and private sector in 2006 and orders from the Supreme Court in 2011 and 2013, certain buildings that are still being constructed or renovated fail to comply with the standards specified, says activist Dr. Ajith C.S. Perera. (Accessible at <http://www.sundaytimes.lk/140928/plus/sri-lanka-still-unfriendly-towards-the-handicapped-119666.html>)

<sup>41</sup> Disabled Persons (Accessibility) Regulations, No. 1 of 2006 promulgated under Article 23 (2) of Act No 28 of 1996. (Accessible at [http://socialemwelfare.gov.lk/web/images/content\\_image/pdf/legislation/act1996.pdf](http://socialemwelfare.gov.lk/web/images/content_image/pdf/legislation/act1996.pdf)).

<sup>42</sup> *ibid* - *Disabled Persons (Accessibility) Regulations, No. 1 of 2006 promulgated under Article 23 (2) of Act No 28 of 1996. (Accessible at [http://socialemwelfare.gov.lk/web/images/content\\_image/pdf/legislation/act1996.pdf](http://socialemwelfare.gov.lk/web/images/content_image/pdf/legislation/act1996.pdf)).*

<sup>43</sup> *Ibid* - *Disabled Persons (Accessibility) Regulations, No. 1 of 2006 promulgated under Article 23 (2) of Act No 28 of 1996. (Accessible at [http://socialemwelfare.gov.lk/web/images/content\\_image/pdf/legislation/act1996.pdf](http://socialemwelfare.gov.lk/web/images/content_image/pdf/legislation/act1996.pdf)).*



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<sup>44</sup> *ibid* - *A deaf girl was raped by a politician in Kurunegala/Wariyapola.* (Accessible at <http://srilankabrief.org/2014/05/sri-lanka-attorney-general-orders-suspects-who-raped-deaf-and-dumb-girl-to-be-freed/>)

<sup>45</sup> Detailed undergraduates enrolment of higher educational institutions 2014, Page no page 43. (Accessible at [http://www.ugc.ac.lk/downloads/statistics/stat\\_2014/Chapter%203.pdf](http://www.ugc.ac.lk/downloads/statistics/stat_2014/Chapter%203.pdf))

<sup>46</sup> *ibid* - *Census of Population & Housing 2012, Department of Census and Statistics Sri Lanka. Page no 136.* (Accessible at <http://www.statistics.gov.lk/PopHouSat/CPH2011/Pages/Activities/Reports/FinalReport/FinalReportE.pdf>)

<sup>47</sup> *Lack of Access to Basic Services.* (Accessible at <http://www.ips.lk/talkingeconomics/2016/04/25/sri-lankas-invisible-children-the-need-for-inclusive-education-for-children-with-special-needs/>)

<sup>48</sup> Minister of Education pledged education for all by 2015 during the 2011 ECOSOC Annual Ministerial Review, Geneva in July 2011. (Accessible at [http://www.un.org/en/ecosoc/julyhls/pdf11/14general\\_debate\\_sri\\_lanka.pdf](http://www.un.org/en/ecosoc/julyhls/pdf11/14general_debate_sri_lanka.pdf))