

Critical Reflections on Recognising and Enforcing Disability Rights within the Sri Lankan Legal Framework

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Background

The use of law as a response to disability is arguably a recent development in Sri Lanka and is reflected primarily in *The Protection of the Rights of Persons with Disabilities Act* (hereinafter ‘the Act’).¹ Even at a policy level the link made between the responsibility of the State towards disabled people and towards the protection of their rights remains weak. Most measures taken for the improvement of the conditions of disabled people remains both basic in quality and simplistic in its rationale. For instance, in the case of *Ajith CS Perera v Attorney General* (SC/FR) 221/2009 the Supreme Court ordered that the accessibility regulations issued under the Act in 2005 should be implemented. To-date however the implementation of those regulations is far from satisfactory. That example suggests that in the absence of a grounded understanding of the context (including models for understanding disability), law reform will not be effective in improving the enjoyment of disability rights in the country.

Therefore, in re-imagining disability law in Sri Lanka, it is necessary to draw on the existing understandings of the impact of disability on the quality of life of people with disability and the community in general and to also challenge some of those existing understandings. This paper seeks to advance four arguments in that regard.

Methodology

A qualitative method will be employed within a critical methodology in this paper. Martha Nussbaum’s ‘capabilities approach’ as interpreted in relation to the social contract theory, will be drawn on in assessing the nature of responsibility of the Sri Lankan State towards people with disability and in fleshing out the constitutional duties of the State to disabled people particularly under Articles 3 and 4.

Outcomes

The paper seeks to argue for a contextualised approach to legal mobilization regarding the rights of disabled people in Sri Lanka.

- **Responding to challenges relating to ‘Inclusivity’ in Sri Lanka**

It will be argued that the challenges for protecting the dignity of -people with disability through law must be located within a broader Sri Lankan context wherein there is a greater challenge of understanding and/or internalizing the value of ‘inclusivity.’ That is a challenge that Sri Lankan society has in many cases failed to undertake. Comparisons will

¹ No 28 of 1996 as amended

be made between inclusivity issues regarding gender and language with disability and what these approaches mean for understandings of ‘difference’ within Sri Lankan society.

It is only through a nuanced understanding of the causes and effects of the general problem of lack of inclusivity in Sri Lankan public life and in the implementation of the public law that a meaningful call can be made for the recognition and protection of the dignity of disabled people and for their inclusion in the ‘mainstream’ of public life.

- **Drawing from different frameworks of reference for understanding disability in the Sri Lankan context**

It is also helpful to understand the influence of the religions and philosophies practiced in Sri Lanka on the general understanding of disability. The different beliefs have resulted in different understandings of the causes of disability and also the responsibility of society towards them. An assessment of that influence will be crucial in developing policies for the recognition of the dignity of disabled people. This task will be assisted through the exploration of contested models for understanding disability such as the bio-medical models and social models of disability, the former viewing the impairment as the cause of barriers, whilst the latter understanding the social environmental and relationships to produce exclusion.

- **Constitutional responses**

The Sri Lankan legal system could potentially play a decisive role in promoting the dignity of disabled people in Sri Lanka, particularly within the constitutionally recognised concept of ‘People’s sovereignty’. The general significance of constitutional values, the particular implications of the chapter on fundamental rights and the policy implications stemming from the chapter on directive principles of state policy require close analysis in this regard.

It is submitted that the political values that underlie the Republican Constitutions and particularly the Second Republican Constitution casts an open ended responsibility on the agents of the State to protect and uphold the dignity of the People. Those political aspirations are further reinforced through the constitutional provisions in Articles 3 and 4 which stipulate that in Sri Lanka sovereignty is vested in the People and is inalienable

Both the chapter on Fundamental Rights and the Directive Principles of State Policy are silent on the rights of the disabled except for Article 12(4) which recognizes the constitutional validity of ‘affirmative action’ for women, children or disabled people. The recent interpretation by the Supreme Court of that provision in the Special Determination of the Local Authorities (Special Provisions) Bill and Local Authorities Elections (Amendment) Bill (07/2010) is problematic and seems to suggest a very narrow interpretation of the same.

Given the lack of specific provisions, the significance of the constitutional values becomes more significant and needs to be explored fully at an academic level so that the judiciary can be convinced of the possibilities that exist within the existing constitutional framework.

The ratification of the Convention on Disability Rights 2006 should also be considered as a matter of urgency. Even though the Supreme Court has recently affirmed the dualist

nature of the Sri Lankan legal system, ratification of the Convention will institutionalize State responsibility with regard to the disabled and therefore create a unique space for legal mobilization for the same.

- **Relevance of the ‘rule of law’ to ‘disability’ in Sri Lankan society**

The first specific law for disabled people, *The Protection of the Rights of Persons with Disabilities Act* and the regulations that have been issued under that Act provide, in theory, several guarantees for disabled people. However, the legislation and the regulations have not resulted in a significant improvement in the enjoyment of those guarantees.

A specific issue related to rule of law that is relevant to the question of disability rights is that of failures in law reform to bring about any significant improvements in Sri Lankan society. The failures of recently set up institutions and the failures of new legislation illustrate this point. It is essential to understand the causes for the failures in those law reform exercises if the same mistakes are not to be repeated in relation to future legal reform regarding disability rights.

Conclusion

Legal recognition for the rights of disabled people is an urgent need. However, the process of legal reform will be meaningful and effective only if it is contextualized and responded to ground realities of Sri Lankan society.

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