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Disability Legislation and Mental Illness: What the stakes are

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Are we 'the mentally ill', 'persons with mental illness', 'the mentally disabled', 'persons with mental disabilities' or 'persons with psychosocial disabilities'? Whether we think of how we should name ourselves as a significant matter or a silly issue, we may be named by our laws and may have to make negotiable peace with these names. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, is a law that lists 'mental illness' as one of the meanings of the term 'disability' for the purposes of the act. The other categories of disabilities include blindness, low vision, leprosy-cured, hearing impairment, locomotor disability and mental retardation. This brief essay is an attempt to understand mental illness in the context of the PWD Act and an appeal to mental health interest groups in the country to become more involved in the mobilizations around the new law that will repeal the PWD Act. The new law currently known as the 'RPD Bill' or the Rights of Persons with Disabilities Bill 2014 has been prepared in accordance with the UNCPRD to which India was one of the earliest signatories. The essay will, however, begin by reflecting on the term 'disability' and explore whether the use of this terminology has caused discomfort among mental health interest groups and why it is perhaps time to displace that discomfort.

The MFC mid-annual meeting held in October in Hyderabad made me wonder if the concept 'disability' meant anything at all to the mental health interest group that was gathered there. Except for two people who work in the NGO sector, none of the other service providers, health-care practitioners used the word disability. How much does this have to do with the sense that 'disability', the term itself is structured with a negative prefix and two with how the category disability is more often than not visually represented in signs and signage as a physical one? The problem could be that the physical nature in which the category disability is rendered obscures invisible disabilities such as mental illness, hearing impairment and mental retardation. It's intriguing then that popular media chooses to use physical markers to depict mental illness or 'madness' on stage and in cinema – wild eyes and flailing hair, unkempt clothing and at times nudity are all repeatedly used to make visible an invisible category. The invisibility of mental illness seems to be the cause for great anxiety and a category that when identified visually has only caused harm. The present is a good time in which to impress the larger disability movement to take up more strongly the differences of people with invisible disabilities and bring greater recognition to such groups, one being people with mental illnesses.

But what is significant to apprehend about the category disability is that the disability rights movement the world over and in India has given this term a non-evaluative sensibility. Disability, a category that includes a wide variety of conditions, diagnoses and categories, is now reclaimed as category of identity and not just a descriptive label. Disability has come to connote diversity and difference. Making disability a value-free category has been a signal accomplishment of the disability rights movement and one that could well imbue the mental health movement with a similar force.

The framing of disability as an aspect of humanity that is worth reclaiming may facilitate more beneficial give and take between the disability rights activists and the mental health interest groups, one instance of which is the group that has come together for the MFC annual meeting.

Another reason why mental health practitioners and activists have distanced themselves from the category disability was that the PWD Act that explicitly frames mental illness as disability has done some disservice to this group of stakeholders. Perhaps mental health interest groups have used it and given up on it, because, after all the PWD Act is also known as a legislation that failed people with mental illnesses. While there are critiques of this law and strong arguments for its including mental illness "more by default rather than by intent"¹, this is the one law we have, at the moment, that emerged within the human rights paradigm and discourse and therefore distinct from the more one colonial and archaic Mental Health Act of 1987. The PWD Act, in spirit at least, argues for equal opportunity and full participation. What's more important is that, the PWD Act and critiques of it have paved the way for the new bill that has been identified from its earliest draft as one that would ensure legal capacity and independent living to all persons with disabilities. Nevertheless, let's take a look at how and why the PWD Act has failed in ensuring even basic entitlements of 'equal opportunity' and 'full participation' to people with mental illnesses.

The PWD Act provides that a person "suffering from 40 percent or more disability" can be defined as a disabled person. Such measuring of mental illness raises a major problem as it is difficult to demarcate such a percentage for people with mental illness. One of the reasons is that there is difficulty in computing the total duration of the illness in the context of episodic illnesses². Certification of disability is also a complex matter in the case of mental illness when compared with the other disabilities listed in the PWD Act because many mental health professions refuse to certify people with substance dependence syndrome. Suresh Bada Math and Maria Christine Nirmala argue that mental health professionals don't realize, when asked to certify, that what they are engaging with is not the person's diagnosis but the disabling situations they may face on a day to day basis³.

Shampa Sengupta who is involved with Sruti Disability Rights Centre in Kolkata, and an advocate of the disability rights of people with mental illness, speaks movingly about this problem of defining what 'home' is for persons with mental illness or psychosocial disabilities⁴. In her experience of working with such persons in the hope that they obtain disability identity cards, Shampa found that one of the major hurdles was that a lot of people, especially women, had no place they could call home. Not having a home meant not being able to apply for the ID cards as that requires proof of residence. Since a lot of the women had been displaced from their homes and were either in institutions or between these two places, they had no address to supply.

Though there are provisions for reservation in education and employment sectors according to the PWD Act, this does not include reservations for persons with mental illnesses. One of the major hindrances in the PWD Acts inability to ensure equal opportunity and full participation for people with mental illness is the presence of regressive clauses in other laws. Many other laws use the category of 'unsound mind' or 'unsoundness of mind' to disqualify people with mental illness from a variety of contractual and political activities. Both Bhargavi Davar and Amita Dhanda have argued for a long time for the removal of these regressive clauses in their academic writings as well as in their media activism.

Unsoundness of mind is grounds for divorce according to section 13 of the Hindu Marriage Act. This brings us to the question of whether persons with mental illness could ever identify themselves as and reclaim the categories "person with mental illness", 'person with mental disability' "person with psychosocial disability" when mental illness as "unsoundness of mind" is discredited by other existing laws. This is likely to make the person in question hide their 'diagnosis', their 'condition', their 'disability' or their 'disease' and not embrace what disability as an identity has offered to persons with other kinds of disabilities, more visible or more physical ones like blindness and locomotor disability. Secondly, having to hide one's diagnostic category or having to hide even a visit to a counsellor or psychiatrist is likely to increase distress. Persons with mental illness then fall between the cracks of these various laws.

Shampa Sengupta writes that in her experience in West Bengal, mental illness seems to have fallen between the cracks between different ministries as well⁵. The ministry of social welfare thinks it is the task of the ministry of health to take care of mentally ill persons and their concerns and the latter thinks it is the work of the former. Since marriage is often considered such an important part of the making of womanhood or of being a woman in the Indian context, the discreditation of mentally ill persons as per the Hindu Marriage Act impacts more severely women with mental illnesses than men, according to Shampa. It is not surprising to hear that "40 percent of divorce cases before the Chennai court involved allegations of unsoundness of mind"⁶. It is for these reasons that there is a greater need for mental health practitioners, activists and survivor groups to come together in the making of stronger disability legislation that will overwrite other detrimental laws.

The UNCRPD (United Nations Convention on the Rights of Persons with Disabilities, 2007) and India's commitment to shape its future disability laws on the basis of the CRPD's framework has brought some hope to this particular group that Shampa speaks of, women with disabilities. The new bill, the RPD Bill has been forwarded to the Standing Committee for further changes is one of the several drafts that have been prepared since 2011⁷. The issue of full legal capacity has been a major part of the UNCRPD and has offered a new lease of life for persons with psychosocial disabilities the world over. Legal capacity means recognizing the legal status of a person before the law and is a significant move if adopted into the RPD Bill because that will then challenge the unsoundness of mind clause in all other legislations that has been detrimental to persons with psychosocial disabilities attaining personhood status before the law and rights to citizenship. Amita Dhanda sees legal capacity as not just a right of persons with psychosocial disabilities and intellectual disabilities but "as a duty of the appropriate government"⁸. The first draft of the RPD Bill had expressly asked for the repeal of all other laws that obstruct the rights of persons with mental illnesses⁹ but the final one that was placed before the parliament nods in the direction of the Mental Health Care Bill¹⁰ of 2013, thus entrusting the concerns of the persons with mental illnesses to the MHC and detracting from the fundamental ideas of the CRPD. The MHC Bill makes a push for institutionalization as well as plenary guardianship and in doing so returns persons with psychosocial disabilities to the medical model or the individual model that the CRPD denounces in its robust focus on the social context of the disablement.

It is important that mental health interest groups in India become actively involved in the discussion and debates on the RPD Bill because there is much to gain. According to Gabor Gambos, the UNCRPD has deemed that "treatment with neuroleptic medications without free and informed consent in psychiatric hospital as violation of the right to be free from torture"¹¹. Considering that

treatments that amount to torture such as ECT¹² are an important focus of this year's annual meeting of the MFC it would be useful to mobilize for the ban of unmodified ECT as a standard treatment method, through the new disability legislation. Detention in psychiatric facilities without the consent of the individual with psychosocial disability would also be a breach of the CRPD. The UNCRPD strongly holds that discrimination on the basis of one's disability is violation of human rights. The CRPD also emphasizes independent living and full inclusion in society thereby enabling persons with psychosocial disabilities to claim rights of living without the restrictions of institutions or the paternalism of family-oriented coercive care. Bhargavi Davar refers to the independent living clause as a "foundational right on which to pitch all advocacy efforts"¹³ The 'reasonable accommodation' clause of the CRPD could mean that persons with mental illnesses be provided certain accommodations in their professional lives.

To conclude, I would urge for this essay to be treated as an appeal to the members of the MFC annual meeting of 2015 to actively participate in discussions around the RPD Bill that is with the Standing Committee presently. Such participation may motivate law makers to ensure that all the provisions in the CRPD be incorporated into the new disability legislation, especially those that people with psychosocial disabilities would most benefit from. CRPD-compliant legislation would have the strength to implement such demands as the removal of unmodified ECT from everyday mental health care practice.

¹ Jayna Kothari, in her book on the future of disability law in India states that the presence of 'mental illness' in the Persons With Disabilities Act of 1995 is "more by default rather than by intent" (Pg 45). She discusses the ambiguity in defining mental illness in that legislation and how the absence of an exact definition has led to much confusion in the understanding and implementation of the act.

² In their letter published as 'Stigma Haunts Persons with Mental Illness Who Seek Relief as per Disability Act 1995', in the Indian Journal of Medical Research in July 2011, Suresh Bada Math and Maria Christine Nirmala survey a range of reasons that proves their claim.

³ Math S.B. and M.C. Nirmala (2011) 'Stigma Haunts Persons with Mental Illness Who Seek Relief as per Disability Act 1995', *Indian Journal of Medical Research* 134: 128-130.

⁴ Shampa Sengupta speaking at National Seminar 'Perspectives on Mental Illness in India' held from 1 - 3 July 2010 by The Banyan Academy of Leadership in Mental Health (BALM) in Chennai
<https://www.youtube.com/watch?v=SwYt86vmRvw>

⁵ Shampa Sengupta 'No Rights for the Mentally Disabled', 2008, infochangeindia.org

⁶ Amba Salelkar, Indian Express 'An Unsound Framework', 23 September 2013
<http://archive.indianexpress.com/news/an-unsound-framework/1172844/>

⁷ The Café Dissensus issue of August 2014 (<http://cafedissensus.com/2014/08/15/contents-debating-the-disability-law-in-india-issue-10/>) brings together reviews and critiques of the various drafts of the RPD Bill. Of particular interest may be these articles by Amba Salelkar, 'Between a Rock and a Hard Place: Dilemmas and disability rights' and Jayna Kothari, 'The RPD Bill 2014: New frontiers for disability rights or repackaging the old?' which outline the watered down nature of the Bill that was finally passed by the Parliament. The collection of articles also reflects the different voices of disability interest groups as well as the split between those who think the Bill in its current form should be passed as it would benefit groups of disabled people that are being brought under the category legally for the first time and those who are demanding for a comprehensive overhaul of this Bill with the aim of making it fully compliant with the UNCRPD.

⁸ Anita Dhanda, 'Will the new Bill benefit the freshly included disabilities?' 10 February 2014, *Kafila*.
<http://kafila.org/2014/02/10/will-the-new-bill-benefit-the-freshly-included-disabilities-amita-dhanda/>

⁹ Bhargavi Davar in her article in Café Dissensus titled 'What Changed for Persons with Psychosocial Disabilities in the making of the RPD Bill?' <http://cafedissensus.com/2014/08/15/what-changed-for-persons-with-psychosocial-disabilities-in-the-making-of-the-rpd-bill/> traces the changes in the various drafts of the RPD Bill

and how the clauses on full legal capacity, plenary guardianship and supported decision making have transformed between these drafts leaving people with mental illness at the mercy of the Mental Health Care Bill of 2013 that has provisions for creation of mental institutions as well as the application of plenary guardianship.

¹⁰ The Mental Health Care Bill was introduced in the Parliament in August 2013 and on becoming an Act will repeal the Mental Health Act of 1987.

¹¹ Gabor Gambos, 'Written Submission on the Mental Health Care Bill 2013', <http://wgnusp2013.files.wordpress.com/2013/10/gabor-gombos-written-submission-on-the-mental-health-care-bill.docx>

¹² See Jayashree Kalathil's background paper, 'Unmodified ECT: Challenging the Call to Continue an Inhumane Practice'.

¹³ Bhargavi Davar in her EPW article 'Legal Frameworks for and Against People with Psychosocial Disabilities' (2012) examines the differences between the presently operational Mental Health Act of 1987 and the proposed Mental Health Care Bill and critiques the latter as being non-compliant with the CRPD. <http://www.epw.in/special-articles/legal-frameworks-and-against-people-psychosocial-disabilities.html>