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## Criminal justice and advocacy services for persons with disabilities

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### Abstract

In the contemporary environment of judicial system, it is common to see more and more people with disabilities taking part, as either offenders or victims than they were years ago. Indeed, according to Williams (1999), people with disabilities are ten times likely to experience violence or abuse than people without disabilities. In order to cap and punish people who deliberately abuse disabled people, the government has established measures to protect disabled people in its criminal justice. Moreover, disabled people require empowerment in order to identify and respond to abuse or violence. Besides, people with disabilities need to know that there are supportive services and systems, which include victim assistance programs, the criminal justice system, and advocacy services. The shortcomings exhibited by the judicial system have contributed significantly to the tribulations of the disabled who are left “exposed and defenseless, resulting into their further injury during investigative and legal procedures” (Henderson & Bryan, 2011). Besides, myths, stereotypes, and attitudes held by the public towards people with disabilities interfere with presentation of evidence.

**Keywords:** Support services, criminal justice system, advocacy services, assistance programs, persons with disabilities, abuse & violence

### Introduction

The study of the link between developmental disabilities and crime, and the consequent development of policies and legislation, has evolved significantly over the past 100 years. The idea that individuals with developmental disabilities were predisposed to criminal activity was of considerable interest to the fledgling field of criminology throughout the early 1900s. This particular idea made such an impact on the legislators and policy-makers of the time that special eugenics programs and legislation were developed, and special institutions were built to house, protect, and train developmentally disabled individuals (1997). Although the institutions remained, the link between developmental disability and crime subsequently faded in importance as theorists of crime and punishment began to focus less upon biological, and more upon the psychological and sociological causes of criminality. Persons with disabilities often find themselves marginalized by society and by our justice systems. We can improve access to justice by training better advocates. Advocates not only must be knowledgeable concerning relevant laws and regulations, but also must be able to interact effectively on a personal, professional level with persons who have disabilities. We also want to make certain that persons with disabilities have the opportunity to learn to advocate for themselves and for other persons with disabilities. Technologies are available that can help us accomplish these goals.

### Definitional and classification issues

There is considerable definitional diversity in the literature on developmental disability and criminality (Biersdorff, 1999; Simpson & Hogg, 2001a) <sup>[26]</sup>. Much of the diversity stems from the use of IQ and measures of social competence (Barnett, 1986) <sup>[24]</sup>. The American Association on Mental Retardation (also known as the American Association on Mental Deficiency) is recognized as the leading organization in the area of developmental disability that has been responsible for defining the disability since 1921 (American Association on Mental Retardation, 2002; Ellis & Luckasson, 1985) <sup>[20]</sup>.

The Association describes ‘intellectual deficiency’ as having both intellectual and behavioural limitations, “as expressed in conceptual, social, and practical adaptive skills” (American Association on Mental Retardation, 2002: p. 1) <sup>[20]</sup>. According to the Association, the condition must develop prior to the age of 18 (op cit.). In applying this definition, the

1. Association identifies the following five points: Limitations in present functioning must be considered within the context of community environments typical of the individual's age, peers and culture
2. Valid assessment considers cultural and linguistic diversity as well as differences in communication, sensory, motor, and behavioural factors
3. Within an individual, limitations often co-exist with strengths
4. An important purpose of describing limitations is to develop a profile of needed support
5. With appropriate personalized supports over a sustained period, the life functioning of the person with mental retardation generally will improve (American Association on Mental Retardation, 2002: p. 1) [20].



Fig 1: Disability laws in India- human rights Approach

### Main Concerns

- Disability as a reason for discrimination and denial of reasonable accommodation.
- Lack of education opportunities both at the primary and higher levels and lack of support in the education system.
- Lack of skill development interfaced with market requirements, employment and livelihood opportunities, discrimination in promotions and emoluments
- Lack of access in the built infrastructure, transport sector, services and products, communication and documentation
- Denial of access to most Civil and Political rights
- Marginalization and discrimination faced by women with disabilities

### People with disabilities in criminal justice system

According to Parry *et al.* (2009, p.47), 'people with disabilities in criminal justice system are more vulnerable to abuse, neglect, and violation of their constitutional rights'. Indeed many people with disabilities especially intellectual disability are ill equipped to cope with the criminal justice system. The criminal justice system redefines criminal acts committed to people with disabilities; which moderate the seriousness of crimes committed (Hauritz, 1998, p.200).

For example, people with mental disabilities are excluded from legal systems, since they are perceived to be unfit to provide any evidence, thus increasing chances of victimization. Further there are inherent misconceptions and beliefs regarding people with disabilities which affect how the criminal justice treats disabled people (Henderson & Bryan, 2011, p.3).

Most cases in criminal justice are dropped before finalization since the prosecution authorities do not take evidence from disabled especially mentally challenged people seriously (Williams, 1998, p.35) [3]. Additionally, persons with disabilities are highly affected by depression

and low self esteem which affects their interaction with criminal justice system (Snooks, 2008, p.357) [2].

Moreover, the criminal justice systems do not have adequate correction facilities to handle persons with disabilities. Besides, persons with developmental disabilities are preserved to be violent which leads to incarceration for long duration and in isolation (Hassan & Gordon, 2003, P.5) [5]. Further, there is no proper assessment of level or degree of disability. There exist inconsistencies regarding various techniques used in testing competency of disabled persons. Thus, there is uncertainty on which disabled persons are competent enough to stand trial or take responsibility for criminal activities.

Besides few police, lawyers or other staffs in criminal justice system are trained on how to handle issues related to persons with disabilities. Additionally, various studies have also indicated that people with intellectual disabilities are highly represented in the criminal and juvenile justice systems.

On the other hand criminal justice systems have made changes in order to facilitate accessibility; these changes include installation of wheelchair ramps and provision of hearing and visual aids (Harr & Hess, 2007, p.104) [6].

### 2012 National Survey on Abuse of People with Disabilities:

"Abuse is prevalent and pervasive, it happens in many ways, and it happens repeatedly to victims with all types of disabilities.

"Nearly half of victims with disabilities did not report abuse to authorities. Most thought it would be futile to do so. For those who did report abuse, nearly 54% said that nothing happened. In fewer than 10% of reported cases was the perpetrator arrested.

"When therapy is provided to victims, the therapy is helpful. Unfortunately, about two-thirds of victims were not referred to a therapist."



Fig 2: Disability advocacy programme at APD Bangalore, karnataka

### Prevalence of Abuse

Other researchers have examined either the prevalence, or total estimates, of developmental disability in smaller population sets. Hayes (1997), for example, has studied the prevalence of potential developmental disability amongst individuals appearing before courts in both local and rural areas in New South Wales, Australia, and estimates the prevalence to be, on average, around 30 percent (with a range of 23.6 percent to 36 percent). Mason and Murphy (2002) have studied individuals being supervised in the community on probation orders in south-east England, and found a prevalence rate of seven percent. Lund (1990) has studied offenders serving statutory care orders in Denmark and found that over the time span of the study (January 1970 through to December 1983), the total number of statutory

care orders for developmentally disabled offenders decreased from an average of 40 per year to 29 per year. Hitchen (1994) discovered that an estimated 6.5 percent of the population of those remanded to the forensic psychiatric facility in British Columbia had developmental disabilities.

1. Over 70% of people with disabilities who took the survey reported they had been victims of abuse.
2. More than 63% of parents and immediate family members reported that their loved one with a disability had experienced abuse.

### Types of Disability

- Self-reported victims of abuse:
- Mental health conditions: 74.8%
- Speech disability: 67.1%
- Autism: 66.5%
- Intellectual or developmental disability: 62.5%,
- Mobility disability: 55.2%

### Reports of sexual abuse varied by disability

- Mental health conditions: 47.4%
- Intellectual or developmental disability: 34.2
- Mobility disability: 31.6
- Autism: 24.9

### Types of Abuse

- People with disabilities who were victims reported having experienced various types of abuse.
- Some 87.2% reported verbal-emotional abuse,
- 50.6% physical abuse,
- 41.6% sexual abuse,
- 37.3% neglect, and
- 31.5% financial abuse.

### Suggestions

Suggestions for pertaining to the role of differently abled persons in criminal justice system. Hence, the researcher on the basis of the research objectives, research findings and interpretation proposed the following suggestions for economic social and legal development of disabled persons.

- Criminal justice system should focus on the rehabilitation of differently abled persons as there should be a counselling sessions of victims. Victims want to feel safe in their community and want assurance that offender will be punished for their bad deeds.
- Government should introduce a special post for the interpreter like public prosecutor. Interpreter is a very important person in a trial of an offence against disabled so keeping this in mind there should be a special court which have power to trial the offences with help of a government interpreter, public prosecutor and defense counsel.
- There is a need to raise awareness amongst the law-enforcement agencies that there are ways in which they can be facilitates disabled to give best evidence. They just need to be aware about the technologies and set free from attitudinal barrier with respect to disabled persons.
- Indian panel code also need to be amended with respect to disabled persons. Hence there should be a separate category of offences state. Offences against Disabled Persons. This will help to reduce the victimization at a lower level.

- Apart from this old age persons should also include in the definition of disabled persons under the Act. Hence due to their ageing they are not able to do several things without hue and cry.
- They should be provided free and affordable healthcare services within rural area as well as together with their should be provided free transport to hospitals.
- Differently abled persons who are working in government services. Should be available some special medical benefits in all government hospitals weather interstate or intrastate.
- Differently abled persons should be available on special medical treatment at very less amount so that they can overcome their disability, develop and lead a happy life.

### Empowerment and interventions

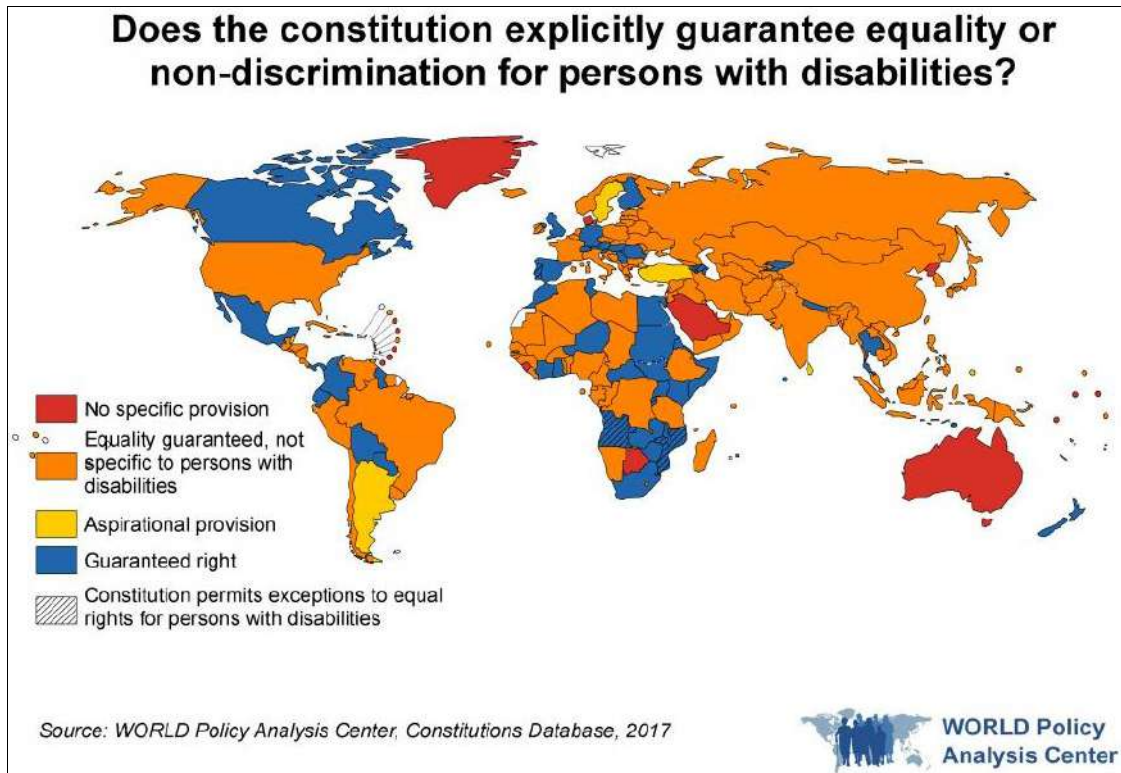
- The persons with disabilities require empowerment in order to help them to identify abuse and available channels of reporting and launching complaints. This can be achieved through training social workers who in turn can train and empower persons with disabilities.
- In addition, there is need to train police, lawyers and other persons in the criminal justice system on how to interact with persons with disabilities. Importantly, the legal structures and policies may have to be reformed in order to incorporate the special needs of persons with disabilities.
- Besides, persons in criminal justice system need to specialized attention in order to prevent victimization. In deed some offences committed by persons with disabilities could be easily prevented by identifying sufferers early and offering support through counseling. According to Emerson (2004) intervention programs like behavior management programs can deter persons with disabilities from committing offenses.
- Generally, incarcerated persons with disabilities need specialized health care which is preferably should be provided by public health officers rather than criminal justice system. Moreover, victims of abuse or violence require support, treatment and counseling after court appearances (Grant *et al.* 2005).

### The United Nations Convention on the Rights of Persons with Disabilities (CRPD)/(UNCRPD)

Its accompanying Optional Protocol represent an extremely important effort to provide consistent, fundamental protections for persons with disabilities. The CRPD consists of 50 articles relating to the rights and treatment of persons with disabilities, and the Optional Protocol contains an additional 18 articles that allow persons with disabilities to vindicate their rights through the UN Committee on the Rights of Persons with Disabilities. The CRPD and the Optional Protocol truly are human rights documents. In its very first Article the Convention declares that, "the purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. The Convention is quite ambitious, attempting to address most aspects of civilized life, including, among other topics, accessibility, awareness raising, discrimination, liberty and security of person, independent living, personal mobility, education, employment, and recreation. Article 13, titled

“Access to justice” states:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings,
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.



**Fig 3:** Better human rights protections around the world for people with disabilities, but gaps remain

**Conclusion**

Persons with disabilities are exposed to the criminal justice systems as victims, offenders or witness. The social beliefs held by a culture influence how persons with disabilities are treated in the community. Disabled persons require criminal justice system to be accessible to them and to hear them without any prejudice. The criminal justice system has not adapted its proceeding in recognition of special needs of people with disabilities (Williams, 1999, p.39) [3]. There is no available method of testing and hence identifying persons with some forms of disabilities. Thus there is overrepresentation of individuals with disabilities in relation to crime and in probation services. Disabled persons need empowerment and counseling so as to facilitate them to handle all issue at all levels of criminal justice. Besides, the police, lawyers need to be trained on how to interact with persons with disabilities. In addition, legal and policy reforms are necessitated, which accommodate the needs of persons with disabilities.

‘For example legislation that regulates the making of decisions on behalf of people with disabilities requires reforms’ (Hauritz, 1998, p.200). Further, identification of persons with development disabilities requires multiple competency assessment in to ascertain competency level. The society perception of disability is one factor that influences how disabled persons are treated in the community and other researchers studying developmental disability and criminality, the identification and subsequent

classification of developmentally disabled offenders begins at the stage of forensic evaluation (see Menzies, 1989; Petrella, 1992). As such, screening procedures and tools used to identify and classify mentally disordered offenders generally, and developmentally disabled offenders specifically, must be consistent in order to ensure the reliability and validity of this key stage in the criminal justice process. Moreover, research that attempts to determine the prevalence of developmental disability amongst individuals in the criminal justice system ought to go further than the study and examine the nature of the offences committed by offenders and the circumstances surrounding the commission of the crimes. This will ensure a qualitative, as well as quantitative, understanding of the relationship between developmental disability and crime that will likely better inform criminal justice policy and practice.

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