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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Pasumai Thaayagam Foundation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2021]

* Issued as received, in the language(s) of submission only.



Path breaking Landmark Judgment upholding rights of differentially abled persons, by the High Court of Madras, India

The Office of the High Commissioner for Human Rights (OHCHR) reiterates that Persons with disabilities are no longer recipients of charity or objects of others' decisions but holders of rights. The intent of the Convention on the Rights of Persons with Disabilities (CRPD) 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." Article 1 of the Convention's specifies that the purpose of the Convention is intended to ensure that persons with disabilities enjoy access to human rights just like everyone else and are free from discrimination. Article 13 states Parties must ensure that persons with disabilities have access to justice on an equal basis with others, including ensuring that appropriate accommodations are made to facilitate their participation in all legal proceedings as parties and witnesses. Following suit a landmark judgment has been promulgated by the Honourable High Court of Madras by Mr. Justice RMT. Teekaa Raman, in a criminal appeal.

Facts of the case

It is a case that the accused is alleged to have committed an act of kidnapping one visually challenged lady, who came from her village to Chennai for learning English Music at an institution located in Chennai. The 22 years old lady travelled to Chennai and engaged an auto driver (three wheeler hired vehicle) to transport her from the bus stand to Music Institute. The accused instead of taking her to the place of her destination took her to another route and parked the vehicle in an isolated place, unfamiliar to the victimized. Thereafter, he had gone to the seat where the victim lady was seated and forcefully kissed her after hugging, caused sexual harassment to her by putting his hands on different parts of her body. She shouted and pleaded for help. The accused criminally intimidated her by threatening that he would even go to the extent of murdering her in case of her not cooperating with him. She cried for help and with the support of few local people she escaped and filed a case before the police. A case was registered and charge sheet was framed and came for trial. Basing on her deposition before the court and other supportive evidences the perpetrator was sentenced to 7 years imprisonment by the honorable trial court.

The trial court convicted him for offences under sections 366 (kidnapping a woman), 354 (Assault or criminal force to woman with intent to outrage her modesty), 506 (ii) (Criminal intimidation) of the IPC and Section 4 (harassment of woman) of the Tamil Nadu Prohibition of Woman Harassment Act primarily based on the evidence of the victim woman. After conviction, the accused filed Criminal Appeal before the Honourable Madras High Court, under Section 374(2) of the Criminal Procedure Code, to set aside the order passed in Special Sessions Case No.225/2013 dated 27.04.2015 passed by the trial court Special Judge, Mahila Court, Chennai, challenging the evidence of the credibility and trustworthiness of a visually challenged girl. It was argued that her evidence cannot be treated as eye witness since she cannot see, identify the accused and testify.

Legal points observed

Credibility and trustworthiness of the prosecutrix, the visually challenged was discussed in detail. Her evidence in identifying the perpetrator, who kidnapped her and meted out sexual harassment on her, was challenged. The honorable court held that her testimony entitled equal weight as that of a prosecutrix who could have been able to visually identify the perpetrator. It was observed that the law does not distinguish the evidence of able-bodied person with that of the disabled [differently enabled]. Merely because of the factum of disability, her evidence cannot be treated as inferior in nature to that of able-bodied person. To do so, could be negation to the constitution principle of right of equality.

The Honourable Madras High Court, rejecting the argument of the petitioner that victim's evidence could not be relied upon since she was blind observed that the witness as a blind lacks vision, but her version had vision and hence, the Court holds that her evidence is admissible in evidence, and further stated that the evidence of disabled person is nowhere inferior in nature to that of able-bodied person. Citing circumstantial and other evidence, the judge observed, merely because a victim of sexual harassment had visual disability, her evidence against the culprit cannot become inadmissible and evidence of disabled persons cannot be treated as inferior in nature.

Observing that the evidence from a differently-abled person is not inferior to that of an able-bodied person, the Madras High Court rejected the submission of the appellant that the witness provided by a visually challenged cannot be termed as an eye witness and at best can be termed only as a hearsay witness and hence cannot not be admissible as evidence. Justice RMT Teekaa Raman, said: "In the case on hand, the victim's blindness meant she had no visual contact with the world. Her primary mode of identifying those around her, therefore, is by their voice and so her testimony is entitled to equal weight as that of a prosecutrix who could have been able to visually identify the appellant."

The Court observed, "Law does not distinguish the evidence of an able-bodied person with that of the differently enabled. Merely because of the factum of disability, evidence cannot be treated as inferior to that of an able-bodied person. Doing so could be negating the Constitution principle of the right of equality".

Consideration of the principles of CPRD

The reasoning assigned by the Honourable Judge in accepting the evidence is keeping in principles under Article 5 of the CPRD consisting equality and non discrimination which promulgates that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law, and prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. Furthermore, Article 12 (equal recognition before the law) was "facilitated by the Madras High Court and secures a progressive approach to the legal capacity and, for the first of its kind in Indian Court, recognizes a right to use support to exercise one's legal capacity. The honourable court reaffirmed that persons with disabilities have the right to recognition everywhere as persons before the law and persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. This was in pursuance with the legal mandate that states Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

Conclusions and plea before the United Nations Human Rights Council

It is most humbly prayed before the United Nations Human Rights Council that the Council to take note of the path breaking judgment under proper appreciation and recognition to place on records. Persons with disabilities have historically been invisible in the human rights system and have been overlooked in human rights work and the CRPD is intended to ensure that persons with disabilities enjoy access to human rights just like everyone else and are free from discrimination. Article 1 of the CRPD states that the Convention's main purpose 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 judgment asserts the legal equality of a disabled person [differently abled person term in India] as a fundamental right that ensures individuals are empowered to access justice and challenge the violation of any of their rights and facilitate their participation in all legal proceedings (including as a trial witness) and in the instant of delivering judgment recognizing the legal equality, an evidence of disabled person by the Indian Court [by the Madras High Court] in the above said judgment is bring to the notice for proper appreciation and recognition to place on records. This is a landmark judgment to be adopted as precedent

in future cases wherein discussions on considering the deposition of the persons with disability arise.
