



**Submission of Alternative Report (Article 6)
To the Committee on the Rights of Persons with
Disabilities : India 2019**

**Submitted by the Women with Disabilities India Network
On
10th February 2019**

**Report In Response To The Initial Report of
The Government Of India**

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ABBREVIATIONS

ALIMCO: Artificial Limbs Manufacturing Corporation of India

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women

CRC: Convention on the Rights of the Child

CRPD: Convention on the Rights of Persons with Disabilities

CRPR: International Covenant on Civil and Political Rights

DePWD: Department of Empowerment of Persons with Disabilities

DPO: Disabled Persons Organizations

DRDA: District Rural Development Agency

DISE: District Information System for Education

ECT: Electroconvulsive Therapy

FIR : First Information Report

ICESCR: International Convention on Economic, Social and Cultural Rights

LOI: List of Issues

MNREGA: Mahatma Gandhi National Rural Employment Guarantee Act/ Scheme

MSJE: Ministry of Social Justice and Empowerment

NCRB: National Crime Records Bureau

NCW: National Commission for Women

NFHS: National Family Health Survey

NGOs: Non Government Organizations

NHFDC: National Handicapped Finance Development Corporation

NRLM: National Rural Livelihood Mission

NSSO: National Sample Survey Office

NTA: National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999

PWD: Persons with Disabilities

PWDA: Protection of Women from Domestic Violence Act, 2005

RCIA: Rehabilitation Council of India Act 1992

RPWDA: Rights of Persons with Disabilities Act 2016

RSBY: Rashtriya Swasthya Bima Yojana

TCS: Total Sanitation Campaign

VRC: Vocational Rehabilitation Centre

1.0: EXECUTIVE SUMMARY

Introduction: Women with Disabilities are one of the most vulnerable and invisible sections in India. The Census of India 2011 puts their total number at 11.8 million. Due to their gender and disability they are at the greatest risk of violence. Other intersecting factors- class, caste, ethnicity, rural/ urban residence, low education, weak response systems- compound the impact of gender and disability. Due to their current dependence on caregivers/ family members, they are extremely vulnerable but systemic and credible data on exact extent of violence against them is not yet available.

We have written this report to address their urgent needs in response to the Indian Government's submission of the "Initial Report under Article 35 of the Convention on August 3 2015 to the Committee of the Rights of Persons with Disabilities.

State Obligation (Art. 4): India has ratified the United Nations Convention on the Rights of Persons with Disabilities (CRRPD) in 2007 and has adopted the Rights to Persons with Disability Act (RPWDA) 2016 in consonance with it. An effort will be made to create the necessary synchrony and synergy by referring to them and data bases available.

Submitting Organization: The submission is being made by the Women with Disability Network and women's disability organizations in India. All of us are women with disabilities involved in advocating, writing and heading disability organizations on issues of human rights of women and girls with disabilities. It is a coalition of activists and disability organizations in India who are jointly submitting this report. We are members of the network and worked consistently on this report since 2017 and contributed to the writing of the Report for consideration to the UNCRPD Committee in response to the Initial India Report on the Status of Disability in India.

Vision and Mission: formed in 2012 as an independent platform our mission has been to work with solidarity on issues of disability and gender, with an aim to create a world that is non-violent, justice and equality. The Network has made submissions in response to India presentations in 2014 to the CEDAW Committee and in 2016 to UPR.

The Submission: This submission of the Alternative Report provides the background on the situation of women and girls with disabilities as per Article 6 (Six) and using the CRPD twin track approach on intersecting Articles 5, 7, 8, 10, 11, 12, 13, 15, 16, 24, 25, 26, 27 and 31. Based on our findings we also provide a list of issues to be raised and recommendations.

This submission urges the Committee to

- i. Enquire into the exclusion of women with disabilities from policies and programs and their implementation that lead to human rights violations against them in India. These are perceived in the continuing gendered discriminations, lack of data, exclusion from education and work and employment, health, violence, sexual and reproductive rights violations including harmful practices such as forced sterilization, denial of legal capacity and absence of health care.
- ii. We also urge the Committee to look into the non-compliance of the CEDAW concluding observations to India (2014) and its commitments under various national laws. We also communicated our issues to the Universal Periodic Reporting 2016¹.

2.0 SUBMISSION ON ALTERNATIVE REPORT (ARTICLE 6) TO THE UNCRPD COMMITTEE

INDIA 2019

Framework

Introduction

We women with disabilities from India jointly submit this report for consideration to the UNCRPD Committee in response to the Initial India Report on the Status of Disability by the Government of India under article 35 of the Convention on 3rd August 2015 (CRPD/C/IND/1) to the Committee of the Rights of Persons with Disabilities². All of us are involved in advocating and writing on issues of human rights of women and girls with disabilities.

We have studied the report and appreciate the positive initiatives taken by the Government of India. Amongst them the adoption of the Right to Persons with Disabilities Act 2016 and Rules thereof, and are aware of newer schemes such as the Accessible India Campaign and gendered legal initiatives as the Protection of Women from Domestic Violence - Act, 2005. To strengthen this process of inclusion of women with disabilities in the overall legal framework and implementation process we put forward our findings and recommendations with questions that can be posed.

¹Convention on the Elimination Of All Forms of Discrimination Against Women CEDAW/C/IND/CO/4-5Committee on the Elimination of Discrimination against Women Concluding observations on the combined fourth and fifth Periodic reports of India*
https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=79

²Initial report submitted by India under article 35 of the Convention, due in 2011 [3 August 2015] [CRPD/C/IND/1].
https://www.ecoi.net/en/file/local/1416045/1930_1508417772_g1729386.pdf

Our submission is based on the notions that

- i. participation of women with disabilities as primary stakeholders, at all stages of law and policy formulation should be made mandatory
- ii. policy measures with relevant budget allocations and human resource allocations along with defined time targeted outcomes would be more effective.

We urge the Committee to first and foremost highlight in all its recommendations a specific focus on the 11.8 million women with disabilities in India (of a total of 28 million persons with disabilities) and address the historic neglect of this group. The Ministry of Social Justice and Empowerment which is the nodal Ministry for the Department of Persons with Disabilities and Empowerment (Divyangjan) (DePWD) does not adequately address rights of women and girls with disabilities or coordinate any actions with the Ministry of Women and Child to mainstream women with disability issues in national policies and programs and fulfill their obligation to Article 6:

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

The submission provides background on the situation of women with disabilities in India and summarizes specific human rights abuses they face, including violence and access to justice.

2.1 Methodology

This report is the product of two years of data collection (2017 and 2018) both secondary and after consultations with 441 Women with Disabilities in 23 States of India (Annexure1)³.

³ **LIST OF WOMEN CONSULTED FOR CRPD ON ARTICLE 6**

1	LataKanaiyalalKhilahi	Gujarat
2	SharmilabenBabubhaiThakor	Gujarat
3	Chetnabenjivabhai Desai	Gujarat
4	VarshabanmedjiThakor	Gujarat
5	Nikita Amrutbhai Desai	Gujarat
6	Khurshid Begum AbnasaliSaiyed	Gujarat
7	GulshanbanuIshtiyakkhanPathan	Gujarat
8	RoksahabanuDilavarbahai Fakir	Gujarat
9	sonalbenArvindbhai Patel	Gujarat
10	NainabenDashrathbhaiSolankai	Gujarat
11	ZebunaishaBabubhai Fakir	Gujarat
12	RinubenPrahlabdbhaiVagri	Gujarat
13	AartibenBhalabhaiRathod	Gujarat
14	RupabenNathalalGosai	Gujarat
15	UravashiBabubhaiParmar	Gujarat
16	SaidabanuAbdulkarim Sheikh	Gujarat
17	DivyaGopal Dash Sadhu	Gujarat
18	UshabenGanpathbhaiNai	Gujarat
19	LatabenBabulalTuri	Gujarat
20	MehnunabenAiyubbhaiMemoji	Gujarat
21	BindubenArvinndbhaiPrajapati	Gujarat
22	MehnudabenAbdularehmanSehikh	Gujarat
23	KhushiShaminaAbdulrehman	Gujarat
24	ArtiManojkumarBhagia	Gujarat
25	MonekaBothabhai Parmer	Gujarat
26	EkavadiaJuliRamjibhai	Gujarat
27	GamitSharmilaChaturbhai	Gujarat
28	ChandrikaBhartabhaitrvedi	Gujarat
29	Patel KritikaRohit	Gujarat
30	Patel Rinku	Gujarat
31	VagamsiUrmilaBabubhai	Gujarat
32	TudviGunguben	Gujarat
33	DamorGeetaben	Gujarat
34	Patel Tejal	Gujarat
35	UshaRamjibhaiRathod	Gujarat
36	ChauhanJigisha	Gujarat
37	NayakShitalbenRavindranathkumar	Gujarat

The participating organizations and networks of Women with Disabilities who led consultations and wrote the report include

1. Women with Disabilities India Network: Reena Mohanty National Coordinator
2. Institute of Development Studies Kolkata: Prof. Nandini Ghosh: Report Coordinator
3. Centre for Women's Development Studies: New Delhi Prof Renu Addlakha: Report Convener
4. Association for Women with Disabilities: AWWD Kuhu Das
5. Rising Flame- Nidhi Goyal
6. Tata Institute of Social Sciences Mumbai: Prof Sandhya Limaye
7. Independent Consultant Jeeja Ghosh
8. UNNATI Organisation for Development Education: Deepa Sonpal
9. Anjali: Ratnaboli Ray
10. Odisha Network of Women with Disabilities
11. Gujarat Network of Women with Disabilities
12. Bapu Trust for Research on Mind and Discourse, Pune: Bhargavi Davar
13. AccessAbility : Shivani Gupta
14. Shanta Memorial Rehabilitation Centre, Bhubaneswar

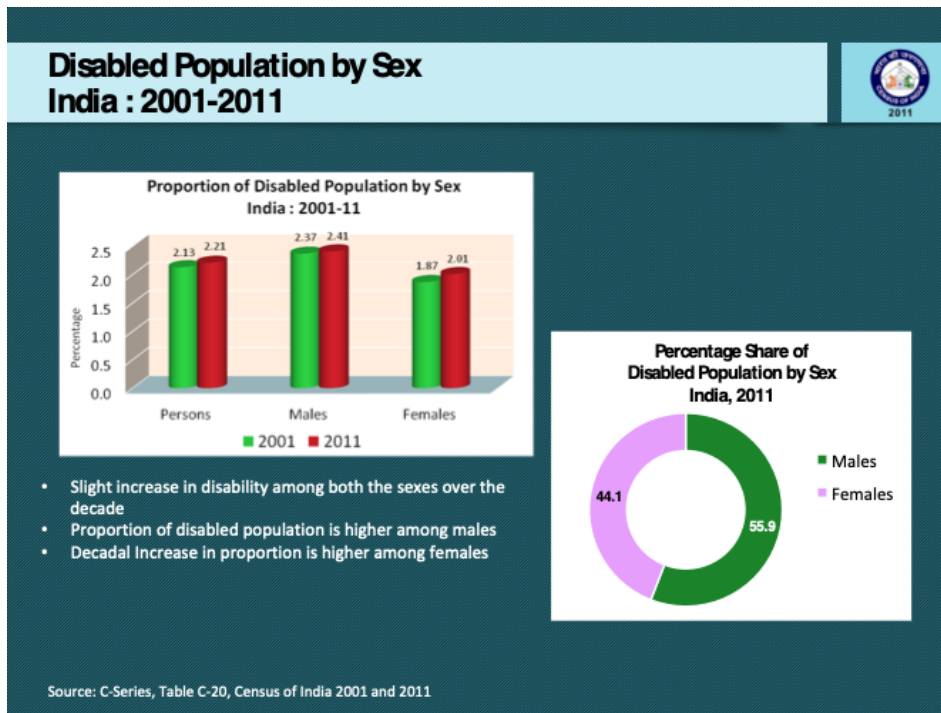
The members have also participated in the National CRPD Coalition parallel reporting.

2.2 Demographic Representation. As per Census 2011 there are over 26.8 million persons with disabilities in India, which constitutes 2.21% of the population. Among these about 15 million are men and 11.8 million are women. Women with disabilities constitute 44% of the total

disabled population (Annexure 2)⁴. Although the absolute numbers of men with disabilities is higher the gender gap disappears and even reverses at older ages. Rates of seeing disabilities have been found to be higher among women⁵. As disability statistics in India are based on bodily impairments alone excluding social impairments, a large number of women are left out in the enumeration process.

4 ANNEXURE 2 GENDER DATA

Census of India 2011 (2013) Data on Disability . Office of the Registrar General of India



⁵Registrar General Government of India Census 2011 http://censusindia.gov.in/Census_And_You/disabled_population.aspx

2.3 Legal Framework: and Implementation

As per the Initial India Report, in the Constitution of India Articles 15 and 16 prohibit the State from discriminating on the basis of sex and in the case of employment. The Directive Principles of State Policy also impose a positive obligation on the State to improve the status of women, by providing equal treatment of both men and women. India ratified the UNCRPD in 2007 and introduced a new national law based on it The Rights of Persons with Disabilities Act 2016. India is also a signatory to the CEDAW, ISESCR and ICRPR. The national law is strengthened by the Domestic Violence Against Women Act 2005 and the Criminal Law Amendment Act 2013 which has specific provisions for women with disabilities. Besides these laws are the comments made by the United Nations Committees such as Recommendation 3 of CRPD that harmful stereotypes helps perpetuate human rights abuses⁶.

The RPWDA provides the following specific provisions relating to women with disabilities are Equal Rights, Access to Schemes, Livelihood, Sexual and Reproductive Health, Decision

⁶CRPD Committee General Comment Article 6: Women and Girls with Disabilities para 33 and 38

making (Annexure 3)⁷. Most other laws such as RCIA and NTA are not gender inclusive. The Mental Health Care Act 2017 provides for a framework for the use of ECT and Art. 95c

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Annexure 3 RPWDA ARTICLES RELATED TO WOMEN WITH DISABILITIES

4. (1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

24 (3) The schemes under sub-section (1) shall provide for,—

(d) support to women with disability for livelihood and for upbringing of their children;

25 (k) sexual and reproductive healthcare especially for women with disability.

37 The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide,—

(a) five per cent. reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;

(b) five per cent. reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;

(c) five per cent. reservation in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.

stipulates that sterilization of men and women when such sterilization is intended as a treatment for mental illness shall not be performed⁸. No specific budgets are provided.

India is a federal country and its powers are divided between the Centre and 23 States. There is no system of coordination across sectors. The nodal Ministry is of Social Justice and Empowerment (MSJE) which includes DePWD. The Ministry of Women and Child Development is a separate ministry. There is no coordination on issues of women with disabilities so they are overlooked by both Departments.

In this context we have observed that despite women with disabilities raising their voices at many forums including the two reports (CEDAW and UPR), there has been continuing discrimination and attention not paid to their concerns, which resulted in disabled women still not being mainstreamed in many Acts, policies and programs.

Background to Report

The Coalition has used Human Rights mechanisms in the context of India Reports in regard to CEDAW 2014 and UPR 2016. The following were the

A. List of Issues in response to the India Initial Report 2014 and 2016:

1. Considering the exclusion of women and girls with disabilities from disability and mainstream policies and programs: engage them and their organizations in consultation, design, monitoring, and evaluation of programs, initiatives policies and laws that affect them.
2. With high level of harmful practices existing: establish a policy and a monitoring system based on a specific data set on harmful practices that affect Women & Girls with Disabilities
3. With no information of their status due to lack of data: collect data on gender-based violence that is disaggregated by disability and specifically address the forms of gender-based violence experienced particularly by women and girls with disabilities.
4. The existing high level of violence against women with disabilities: Take targeted measures which enable quick action in incident of violence on Women with Disabilities at all spaces, including domestic and work spaces.
5. To achieve mainstreaming: Conduct public information campaigns to create awareness on issues of women with disabilities and create awareness through accessible formats amongst women with disabilities on their rights.

⁸Mental Health Care Act 2017 <http://www.prsindia.org/uploads/media/Mental%20Health/Mental%20Healthcare%20Act%202017.pdf>

6. The existing lack of reproductive health services: Ensure that sexual and reproductive health information and services is available, accessible, acceptable, and of good quality for women and girls with disabilities and is always provided on the basis of free and informed consent.
7. Due to low education and work inclusion: Take targeted measures to address the low rate of employment of women with disabilities by addressing barriers to work as well as education for women and girls with disabilities.
8. Deprivation of existing legal capacity: Remove the existing laws that permit deprivation of legal capacity. Replace these laws with flexible instruments through which an individual can obtain decision-making support, when needed and requested.
9. Prioritize the issues in consultation with women with disabilities

CEDAW had provided concluding remarks. We would like to draw attention of the committee on CEDAW concluding observations on the combined fourth and fifth periodic reports of India⁹:

37a. Enact the Rights of the Persons with Disabilities Bill (RPWDA) 2014, and incorporate a specific section to protect women and girls with intellectual disabilities from forced sterilization, and to repeal laws and prohibit disability – based detention of women, including involuntary hospitalization and forced institutionalization. (The Government in 2016 adopted the RPWDA)

37b. Ensure that rights of women with disabilities are mainstreamed within the national strategies and action plans for women, develop support services in the community in consultation with organizations of persons with disabilities as well as intensify its efforts to provide social and health services support to girls and women with disabilities.

37c. Facilitate advocacy on the behalf of women and girls with disabilities.

37d. Create a data base and ensure regular collection of data on persons with disabilities disaggregated by sex, age and type of disability as well as region, and promote the regular analyses and dissemination of such data and develop capacity to undertake this.

⁹ CEDAW /C/IND/CO/4-5 “Concluding Observations on the combined fourth and fifth periodic reports of India adopted by the Committee at its 58th session (30 June-18 July 2014). https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=79

Submission of Specific Articles of CRPD

This submission provides the background on the situation of women and girls with disabilities using the twin track method adopted by the CRPD addressing the rights of women with disabilities explicitly in Article 6 and incorporating protections against abuses that primarily affect women. These rights are in relation to Articles 5, 7, 10, 12, 13, 15, 16, 24, 25, Work and Employment 27 and Statistics and Data Collection 31 are used.

Based on our findings we also provide a list of issues and recommendations. Initially Article 6 as per the Initial India Report is presented:

3. Report on Article 6 and intersections

3.1 The India Report 2015 : Article 6 (50-57)

As Art 6 the Report stipulates from Art 50 to 56 the legal framework existing (50-54) including the Constitutional mandate, the demographic profile as provided above. It provides the women's component of the National Policy for Persons with Disabilities and the Protection of Women from the Domestic Violence Act 2005, both adopted before the UNCRPD so not harmonized. The PDVA is not disability specific. It also provides the provisions promoted as part of the XII Plan of India (53) and schemes that have been implemented (57). The National Policy provides for 25% beneficiaries in all rehabilitation projects, short stay homes and hostel for young women and homes for aged.

52: The National Policy for Persons with Disabilities 2006 where it "advocates that rehabilitation of women and girls with disabilities should be encouraged by ensuring that they are 25% of the beneficiaries in all rehabilitation projects." The Report does not provide any data to the effect, nor is any national data available in the public domain.

The XIIth Plan emphasises on sensitizing of front line workers, and other provisions are related to work under MNREGA Scheme and inclusion in two mainstream health schemes RSBY and TCS.

53: MGNREGA a demand driven scheme provides 100 days work as part of provisions that do not overtly exclude disabled people but the conditions do not promote inclusion – example for some women with disabilities to be involved in a work, they require modification of implements etc. This kind of reasonable accommodation is not there in most employment /livelihood

program guidelines. A State survey of Telangana and Andhra Pradesh shows a gender gap (Annexure 4)¹⁰.

53. On Rashtriya Swasthya Bima Yojana (RSBY: a "National Health Insurance Programme").It also talks of the introduction of Janani Surakshya Yojana a scheme for safe motherhood to

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ANNEXURE 4

Gender - wise breakup of job cards issued and employment provided under the MGNREGA

	Telangana	Andhra Pradesh
Total No. of Districts under EGS	9	13
Total No of Job Card issued for PWDs so far	129031	168442
Total No. of Individual PWD Labour in the issued PWD Job Card		
a.Male	94362	121308
b.Female	59248	72836
Wage Employment provided to PWD labours (Financial Year 2014 – 2015)		
No. of Household	58100	118224
Individuals	62455	124536
Men (Nos)	38961	83749
Women (Nos)	24775	45738
SC Individuals (Nos)	16011	30441
ST Individuals (Nos)	7164	6780

Source – Satish B.Agnihotri & Sruti Singh 2017 MGNREGA Unexpected Bonanza for persons with disabilities ? in p.157 in Kalpana Kannabiran & Asha Hans India Social Development Report 2016 Oxford University Press New Delhi 148 - 167

reduce maternal and neo-natal mortality. No data is available to know about the access by women with disabilities to the schemes.

53. The Initial India Report mentions that the Steering Committee also recommends that 100% subsidy under Total Sanitation Campaign (TSC) should be provided for construction of toilets in households, where there are differently abled women but no such data is available.

57. Different Ministry/Institutes have listed Provisions Child Care (57). Ministry of Personnel, Public Grievances and Pensions mentions that 16 US Dollars (Rs, 1000) per month shall be paid as special allowance for child care to women with disabilities for maximum two children or till the child is two years old. There will be an increase by 25% every time the Dearness allowance on the revised pay structure goes up by 50%. This scheme has been defunct.

57. The National Policy of 2006 provides specifically projects where representation of women with disabilities is ensured at least to the extent of twenty five percent of total beneficiaries. That there will be special hostels and short stay homes¹¹. 25% of assistive devices distributed by ALIMCO the government manufacturer will be for women. The only information is of SSA programme i.e girls with 1,51,174 male and only 82,939 females being provided assistive devices¹²

57. There is one VRC specifically for women (India Report 57) with most women with disabilities not able to travel alone this does not help. Besides women have faced sexual abuse in the institute¹³.

57. NHFDC and Self Employment of persons with disabilities – Section 232 of the State Report says Government promotes self employment by providing loan on concessional rates through NHFDC. The report says NHFDC distributed 16.9 million US Dollar as loan to 14,703 persons with disabilities beneficiaries for self-employment ventures and organized 2 mega camps and 11 job fairs. However the time frame of this data was not mentioned and no details of information was given about the beneficiaries – like number of women with disabilities received funding, loans benefit accessed by number of women with disabilities etc.

Rights of women with disability finds little space in the report. We therefore voice our concerns as in the following LOIs

4. List Of Issues (Of Concern)

4.1 Barriers In Equality And Non Discrimination (Art 5), Equal Recognition Before The Law (Art 12) And Access To Justice (Art 13)

¹¹National Policy for Persons with Disabilities 2006 [http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/NationalPolicyForPersonswithDisabilities\(1\).pdf](http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/NationalPolicyForPersonswithDisabilities(1).pdf)

¹²Lok Sabha Secretariat 2018 Standing Committee On Social Justice And Empowerment (2017-2018). (Sixteenth Lok Sabha) Review of the Functioning of Artificial Limbs Manufacturing Corporation of India (ALIMCO) Sixty-First Report http://164.100.47.193/Isscommittee/Social%20Justice%20&%20Empowerment/16_Social_Justice_And_Empowerment_61.pdf

¹³ Women with Disabilities India Network 2014 n 15

1. Women with Disabilities continue to remain far from achieving both de-facto and de-jure equality. A legal interpretation of equal recognition before the law has been covered in various Conventions, ratified by India. The Government is also obligated under CEDAW, to deem 'null and void' any existing contracts and private instruments having an effect of restricting the legal capacity of women. Despite the provision of legal capacity there is a failure to recognize it by the State. The newly introduced Mental Health Act does not incorporate all issues in contravention of legal capacity¹⁴.
2. Current policies and practices in India fail to address specific barriers faced by women with disabilities, particularly in response to gender-based violence and violations of sexual and reproductive rights. For instance, although the Criminal Law (Amendment) Act 2013 outlaws violence against women with disabilities in institutional settings, in practice women with disabilities have effectively no access to the justice system when they are institutionalized, either to challenge forced institutionalization or to report and prosecute emotional, psychological, physical, or sexual violence committed against them in institutions¹⁵. As the Justice Verma Report indicates, effective monitoring of these institutions is required¹⁶, and under the CRPD, care and support for persons with disabilities should also be provided in the community rather than in institutions¹⁷.
3. The Criminal Law (Amendment) Act 2013 also does not include several measures critical to ensuring access to justice for women with disabilities who are victims of violence. These include conducting medico-legal examinations by counselors qualified and trained to work with persons with disabilities, in order to collect evidence of gender-based violence cases and allowing women with disabilities to give statements and interviews within their homes or at a convenient place of that person's choice¹⁸. The Act also does not address discrimination that women with disabilities who are victims of gender-based violence may experience in courtrooms, as outlined above¹⁹.
4. Although the Criminal Law (Amendment) Act 2013 recognizes rape against women with physical and mental disabilities, violence continues with few women accessing justice. As per the Report of Human Rights Watch, women with disabilities reported that they suffer humiliation at police stations who still conduct "2 finger tests". They have inadequate access to health, counseling and legal support. There has been no police

¹⁴Government of India 2017 Mental Health Care and critique by Salekar Amba 2017 "Celebrated Mental Health Care Act Restricts Individual Liberty And Fails to Comply with International Standards" The Caravan" <http://www.caravanmagazine.in/vantage/mental-healthcare-act-restricts-individual-liberty-fails-international-standards>; TARSHI 2018 Sexuality and Disability in the Indian Context Working Paper http://www.tarshi.net/downloads/Sexuality_and_Disability_in_the_Indian_Context.pdf

¹⁵Human Rights Watch, 2014 "Treated Worse than Animals" Abuses Against Women and Girls with Psychosocial and Intellectual Disabilities in Institutions in India. USA

¹⁶Justice Verma Report, pg. 420, at http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf. accessed 20th May 2016

¹⁷CRPD, art. 19.

¹⁸Justice Verma Report, n.9 5pg. 448

¹⁹See generally Criminal Law (Amendment) Act 2013 (Ind.).

and judicial training after adoption of the Law. Most women are illiterate, with no source of income and depend on families²⁰.

5. The Initial India Report mentions the usefulness of the Domestic Violence Act 2005(54) and the provision of immediate and emergency relief with a mechanism in place consisting of protection officers, shelter homes and other supportive services. Concerns have been raised about its implementation, including a dearth of protection officers required to file domestic incident reports²¹. Given that women with disabilities face higher rates of domestic violence and additional barriers to accessing justice following violence, lack of a budget to implement the Act has a disproportionate impact on them²².
6. One of the most obvious barriers to equality before law is women's access to the justice system. Physical access to the justice system is lacking for example the family courts in the country are not accessible²³. The lack of availability of sign language interpreters, and lack of criteria for reasonable accommodation in situations where women with hearing and speech impairment who do use sign language in the form of trained special educators to assist and materials in alternative formats for women with visual disability²⁴. The Initial Report provides information on the use of National Commission for Women as a redressal mechanism but no information is provided by the National Commission for Women (NCW) on disabled women provided support²⁵.
7. Current policies and practices in India addressing violence against women fail to address the unique causes and consequences of gender-based violence against women

²⁰Human Rights Watch, (2018) India: Invisible Victims of Sexual Violence; Access to Justice for Women and Girls with Disabilities. New York

²¹Manjoo Rashida, UN Special Rapporteur on Violence against Women,(2014), *Report of the Special Rapporteur on violence against women, its causes and consequences; Mission to India*, para. 59, U.N. Doc. A/HRC/26/38/Add.1

²² CREA, (2012) *Count me IN!: Violence against disabled, lesbian, in sex-working women in Bangladesh, India, and Nepal* 65, available at <http://www.creaworld.org/sites/default/files/The%20Count%20Me%20In!%20Research%20Report.pdf>. :4-5; Women with Disabilities India Network,(2014) *Special Chapter 1a: Women with Disabilities* 124-126, available at <http://womenenabled.org/pdfs/mapping/Women%20with%20Disabilities%20in%20India.pdf>.

²³ From consultation in Gujarat (12th January 2017), Odisha (28th October 2017) All consultations for the submission were made by Shanta Memorial Rehabilitation centre with the help of local DPOs under the guidance of the women with disabilities who have prepared this report. All those consulted in the 15 workshops across India from 2016-2018 were women with disabilities. (Annexure 1)

²⁴Human Rights Watch (2018), *Invisible Victims of Sexual Violence: Access to Justice for Women and Young Girls with Disabilities* in India, New York

²⁵Mahima Nayar and Nilika Mehrotra 2017 :*Invisible Violence: lives of Women with Intellectual Disability*) p. 193 in Kalpana Kannabiran and Asha Hans Social Development Report 2016 Oxford University Press. New Delhi

with disabilities. For instance, the Rights of Persons with Disabilities Act 2016 does not address violence against women with disabilities²⁶.

4.2. Situations of risk and humanitarian emergencies (Art 11,6)

As per the Initial Report (95), in mainstreaming needs of women and children with disabilities, special needs of these groups have been addressed. Education and training of health services personnel in provision of sensitive services for the needs of girls and women with disabilities is one of the vital initiatives. For children with disabilities facilitation of special educators for and topics of inclusion related to disaster management (search and rescue, first aid etc.) in special schools has been undertaken. No policy document on disasters includes women with disabilities No data is available. There is no mainstreaming of disability and specifically gendered issues in any disaster and climate change documents.

4.3 Violence Across Age, Type Of Disability In Private And Public Spaces (Domestic, Institutional Etc.)

- i. Freedom Of Torture Or Cruel Inhuman Or Derogatory Treatment Or Punishment (Art 15 & 16, 12,)**
- ii. Freedom From Exploitation, Violence And Abuse (Art 16, 6 & 12, 15)**

9. Gender-based violence against women with disabilities takes many unique forms. Violence against women with disabilities includes violence that is perpetuated by stereotypes that attempt to dehumanize or infantilize, exclude or isolate them, and target them for sexual and other forms of violence²⁷.

10. The India report makes mention of Domestic Violence Act 2005 which can be used to combat violence perpetuated against women with disabilities, through the provision of relief and rehabilitation. The Indian Laws however do not take cognizance of the special types and the intensity and magnitude of violence perpetuated against women with disabilities²⁸.The Domestic Violence Act does not include women with disability specific issues nor is there any data on how many disabled women have accessed justice under the Act.

This section describes the situation of violence against women with disabilities in India in the home and private sphere and in state- and privately-run institutions and residential care homes. It also describes how current policies and practices fail to address the unique causes and consequences of violence against women with disabilities.

4.3.1 Violence in the Home and Private Sphere

11. From childhood and into adulthood, many women with disabilities experience violence gender-based violence in the private sphere, ranging from harassment and emotional

²⁶Government of India, 2016, Rights of Persons with Disabilities Act. <http://disabilityaffairs.gov.in/upload/uploadfiles/files/RPWD%20ACT%202016.pdf>

²⁷TARSHI n. 7.

²⁸Daruwalla Nayreen et al 2013 "Violence Against Women with Disability in India: A Qualitative Study" Sage Open July-September 2013 DOI: 10.1177/21582-2440-13499144.sgo.sagepub.com

abuse to rape and physical violence. Frequently, this violence is a result of either the perceived vulnerability of women with disabilities or the stigma associated with disability itself, particularly within families and marital homes

A number of cases from the field (Annexure 5)²⁹ highlight the violence against them

²⁹ **Annexure 5 Violence against Women with Disabilities**

Issue	Disability	Brief Description	Date /Place	Action Takenby State
Forced Sterilization	Intellectual	1. Not married her mother is her carer and takes decision on her behalf. Sterilized since she was not being able to handle her monthly menstruation cycle. 1.Kept at home	(09.09.2017 Telengana)	None
	Intellectual	2. 23 year old illiterate woman sterilized when 17 Doctor supported to avoid unwanted pregnancy. Parents daily labourers.	(19.11.2017 Raipur)	None
	Physical	3. Parents left her with brother and his wife and they shifted abroad. Before going sterilized as she cannot independently manage her menstruation. Studied till under graduation. Level. After an attempt at rape she was stopped from going outside the house.	(19.11.2017 Raipur)	None
	Physical	4. Orphaned stayed with brother and wife Sterilized at age 11 as would not know how to manage menstruation	(28.08.2017 Koppal Karnataka)	None
Sexual Violence	1.Physical	1.Unmarried Parents Daily labourers. Her income pension INR 300per month (40 \$) A drunk entered her house and tried to rape her she could not protect herself. 1. lives with parents and brother and his family.		

12. Women with disabilities in India also face violence at the hands of intimate partners, including husbands and their families.³¹ The UN Special Rapporteur on Violence against Women, during a visit to India in 2013, reported that state-sponsored and privately-run dowry schemes appeared to be in place to incentivize marrying of women with disabilities³², a situation that further devalues women with disabilities and places them in potentially unequal and violent marriages (States of Odisha, Chhattisgarh have schemes that pays men and women with disabilities to marry other disabled people).
13. Women with disabilities worldwide experience domestic violence in all of its forms—physical, sexual, emotional, psychological, and financial—at twice the rate of other women.³³In a study of women with disabilities in Mumbai, 22% of married respondents reported that they had experienced some form of physical violence from their partners, while 23% reported emotional violence³⁴, including threats of abandonment³⁵. Of these women, 81% felt that the violence was due to their disability³⁶. Uniquely, mothers-in-law also played a role in perpetrating violence against women with disabilities, particularly psychological violence, in the marital home³⁷.

4.3.2 Violence in Institutions

14. Under India's international human rights obligations, (CEDAW Committee General Recommendations 19) it has a duty to prevent and punish gender-based violence against all women committed by state actors and to exercise due diligence to protect women from violence committed by others. As per CRPD India has a specific obligation to ensure that women with disabilities are not subjected to arbitrary detention based on their disability, including forced institutionalization, and are not subjected to abuses—

³⁰All consultations for the submission were made by Shanta Memorial Rehabilitation centre with the help of local DPOs under the guidance of the women with disabilities who have prepared this report. All those consulted in the 15 workshops across India from 2016-2018 were women with disabilities. The last three cases in the table matrix were provided by Ratnaboli Ray of Anjali Kolkata

³¹Daruwalla, Nayreen & Chakravarty, Shruti & Chatterji, Sangeeta & Shah More, Neena & Alcock, Glyn & Hawkes, Sarah & Osrin, David. (2013). n 21

³²Manjoo Rashida n. 14.

³³UN Special Rapporteur on Violence against Women,(2012) *Report of the Special Rapporteur on violence against women, its causes and consequences*,para. 31, U.N. Doc. A/67/227

³⁴CREA, (2012) n 15

³⁵Daruwalla, Nayreen & Chakravarty, Shruti & Chatterji, Sangeeta & Shah More, Neena & Alcock, Glyn & Hawkes, Sarah & Osrin, David. (2013). n 21

³⁶CREA n. 15

³⁷Daruwala (2013) n21 pg. 4; CREA n. 15

including forced treatment and emotional, physical, and sexual abuse—in their homes or in institutions.

15. Women with disabilities—particularly psychosocial and intellectual disabilities—also face violence as the result of continued institutionalization in state- and privately-run care homes and hospitals. The CRPD Committee found that the forced institutionalization of persons with disabilities violates the Article 14 prohibition on arbitrary detention based on disability and in its General Comment No. 1 also states that the forced institutionalization of persons deprived of legal capacity, either with or without the consent of their guardians, is a violation of Article 12, the right to equal recognition before the law³⁸. The CRPD Committee has also found that forced treatment and abuse in institutions is a violation of several rights of persons with disabilities, and can amount to torture or ill-treatment³⁹.
16. In India, this violence begins with forced institutionalization, often without any recourse to challenging institutionalization, which is often traumatic for women with disabilities⁴⁰. NGOs in India have documented repeated instances of forced institutionalization and abuses in institutions⁴¹. There is also a lack of access to or information about care or support services for women with disabilities, particularly intellectual or psychosocial disabilities, outside of institutions and within local communities⁴², which can lead families to institutionalize women with disabilities without their consent as they see no alternative.
17. Once institutionalized, women with disabilities in India are subjected to several forms of violence. A 2014 Human Rights Watch report documented repeated forced treatment of women with disabilities in institutions in India, including physical abuse aimed at forcing them to take medicines. This forced treatment included electroconvulsive therapy (ECT), which can have many side effects, with only the consent of guardians or psychiatrist and often without women even being aware they are receiving this treatment⁴³. In 2013, the UN Special Rapporteur on Torture, Juan Mendez, called on states to completely ban

³⁸CRPD Committee, (2015) *Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of the person*; CRPD Committee, *General Comment No. 1: Article 12: Equal recognition before the law*, paras. 40 & 46, U.N. Doc. CRPD/C/GC/1 (2014).

³⁹CRPD Committee, *Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of the person*, para. 11 (2015).; Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez*, para. 89(b), U.N. Doc. A/HRC/22/53 (2013).

⁴⁰Human Rights Watch,(2014) n. 8: 40

⁴¹Women with Disabilities India Network (2014) n 15

⁴²Human Rights Watch,(2014), n. 8: 38-40.

⁴³Human Rights Watch,(2014),n. 8: 9.

forced ECT, classifying its nonconsensual use as torture or ill-treatment because of the pain and suffering it inflicts⁴⁴.

18. Abandoned women with psycho-social disability who reach state custody are susceptible to exploitation, coercion exploited and involuntary treatment or other inhuman behavior and most cases are of involuntary admission through police⁴⁵
19. Women with disabilities in Indian institutions are also subjected to many other forms of gender-based violence. As staffs in institutions are not adequately trained, they may use physical abuse as a punishment against women with disabilities, including those who try to escape institutions. Although sexual violence against women with disabilities in institutions remains mostly a hidden problem, women with disabilities in some institutions are put at increased risk of sexual violence when male staff members work in female wards at night⁴⁶.
20. There is a general disregard and disrespect for women living in institutions, with multiple instances reported about their being forced to stay naked while they are clothes are washed and other ridiculous reasons⁴⁷.

4.3.3 Violence and Access to Justice

21. The Initial India Report states that the Domestic Violence Act 2005 protects women with disabilities and the Act provides for immediate and Emergency Relief. Even though women with disabilities are aware that they can go to police station to report any kind of violence, very few ever filed cases or pursued cases in court. Women with disabilities who went to police station preferred settlements and resolutions outside, instead going all the way to court. This was because they found it too difficult to pursue a case for possibly extended periods and that was often financially and logistically impossible for them. Many even hesitate to go to the police station since they are afraid that bribes may be demanded, they may not be believed or even asked to 'bear silently with the treatment since they are not working/disabled' and taken lightly by the police⁴⁸. A study carried out by SMRC in the States of Odisha, Gujarat, Karnataka and Telangana revealed that⁴⁹:

⁴⁴Human Rights Council, (2013) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, para. 89(b), U.N. Doc. A/HRC/22/53

⁴⁵Kriti Sharma Custody. Conflict, Psycho-Social Well being: Bihar and Kashmir : 207 in Kalpana Kannabiran and Asha Hans n. 18

⁴⁶Human Rights Watch,(2014)n.8: 66

⁴⁷Consultations in West Bengal (31st October 2017) (Annexure 1)

⁴⁸Consultations in Madhya Pradesh (19th February 2018) (Annexure 1)

⁴⁹SMRC 2018 Fact Sheet www.smrcorissa.org/disability-gender-watch.

1. Amongst women with disabilities consulted 92.32% spoke of violence one form or other perpetrated against them. The violence was of different types. 42.72% suffered from physical violence, 76.48% experienced psychological violence, 41.30% faced economic violence and 5.25% admitted of being sexually abused.
 2. Perpetrators were 35.51% fathers, 31.80% mothers, 28.44% brothers, 29.58% husbands, 15.7% brother's wives, 12.93% mother-in-laws, 8.92% father-in-laws, 7.88% community members and only 1.68% strangers.
22. Many women do not pursue it in the court and fake cases can be filed by men⁵⁰. In the family court at Pune 85% of divorce cases were filed by husbands who alleged that the spouse was mentally ill. Medical evidence of mental illness was presented by only 36% of the cases.
23. Swadhar Ghars supposed to be open to women with disabilities do not take them in.

4.4 Limited Access To Education (Articles 24, 8, 6&9, 15, 16, 31)

Education plays a significant role in empowering women with disabilities. Lack of access to education, formal or technical (vocational training), and rehabilitation services by women and girls with disabilities denies them the opportunity to create a sustainable future. Despite the Right to Education many girls with disabilities face multiple barriers.

4.4.1 Lack of Data on Education

24. The Initial India Report in the chapter on Article 24 (para 95) outlines the existing policy frameworks to promote education for disabled people in India but provides very little statistical information about access to education, and there is very little gender disaggregated data outlining present state of access to education for disabled children.
25. Education plays a significant role in empowering girls with disabilities. They are specifically deprived of many rights as they fare poorly in the Indian educational arena in comparison their male counter parts or women without disabilities. As per Census 2011 data, gender disparity in literacy is found to be extensive with female literacy being one third of male (27.09% gendered difference). Only 37% females with disabilities and 58% of males with disabilities were reported to be literate⁵¹. The NSSO reported that as high as 87% of persons with intellectual disability (almost 90% in rural and more than 80% in urban areas) were not literate. Further, 59% of the persons with psycho-social disability and 44% with physical (loco motor) disability were not literate⁵².

⁵⁰Pathare S. Et al. 2015 "Gender Mental Illness and the Hindu Marriage Act 1955". Indian Journal of Medical Ethics Jan-March 12(1)7-13 E. Pub 2012 December 10. <https://www.ncbi.nlm.nih.gov/pubmed/25716434>

⁵¹ Registrar General Census of india 2011, n 4

⁵²NSSO 2003 NSS 58th Round (July-December 2002) Report No 485, Disabled Persons in India. National Sample Survey Organization, Ministry of Statistics and Programme Implementation

26. The statistics on the enrolment of children in school education completely misses the data on girls with disabilities. The overall gender gap in education is therefore ascertained partly through Census and presently available researches which contend that that disparity exists and at all stages of education and at varied levels among different disabilities⁵³. For instance lowest educational enrolment and attainment are found among persons with multiple disabilities, intellectual disabilities, speech and hearing disabilities primarily due to communication barriers and the absence of a congenial learning environment; and among these marginal categories within the disability spectrum, figures for women with disabilities were consistently found to be lower than for men with disabilities⁵⁴.
27. The enrolment status in the special schools suggests that 8 male students with disability are found in comparison to 4 female students with disability in rural areas. Absence of such schools in the rural areas may lead to such limited entry. However, in urban areas female students with disability outnumber male students with disability⁵⁵.
28. The Gender Parity Index(2007-2008) works out lower than in the case of overall enrolment. The GPI was as low as 0.73 at all levels (Classes I - V as well as Classes I-VIII)⁵⁶. There were differences with respect to level of education even among the literates for persons with different types of disability, with worst positioned being those with speech and mental disability with less than 20% being literate⁵⁷. Traditional gender stereotypes defining gender role has adverse impact on education of girl children in India.
29. In India, several factors contribute to the near invisibility of the girl children with disabilities in the sphere of education: It has been observed that poverty, attainment of puberty, distance of educational institutions from home as security hazard especially for girls and perception of girls as future homemakers contribute to deprioritizing education

⁵³Singal, Nidhi,(2009) "Education of children with disabilities in India".Background paper prepared for the Education for All Global Monitoring Report 2010 Reaching the marginalized <http://unesdoc.unesco.org/images/0018/001866/186611e.pdf> accessed 20th May 2017. Women with Disability Network founded in 2012 by the author carried out consultations with women with disabilities from 2013-2014 for the CEDAW India Shadow Report 2014.

⁵⁴ UNDP, Government of India (2007), Shanta Memorial Rehabilitation Centre 2007, A Multi-State Socio-Economic Study of Women and Disability in India, Bhubaneswar. <http://uscd.org/doc/A%20Multi%20State%20Socio%20Economic%20Study%20of%20Women%20With%20Disabilities%20in%20India.pdf>

⁵⁵Women with Disabilities India Network 2014 n. 15

⁵⁶Gender Parity Index is a socio-economic index is calculated as the quotient of the number of females by the number of males in a given stage of education at primary, secondary and tertiary levels (Government of India, Ministry of Statistics and Programme Implementation, n.d.)

⁵⁷Mehta, Arun C.(2010), Elementary Education in India an Analytical Tables 2007-2008 National University of Educational Planning and Administration Noida , 89-90

for girls in India. This is reflected even more blatantly in case of girl children with disabilities⁵⁸.

4.4.2 Violence against women with disabilities in the education system

30. One major barrier to education is physical, psychological and sexual violence against girls with disabilities which remains the most common yet most understated phenomena within families, in institutions and throughout societies. In absence of defined legal framework to prevent it, this poses a serious threat to the safety and security of girls with disabilities in India. Children with disabilities are known to be at higher risk for abuse, partly because they may be perceived as 'easy victims'. Also, abuse toward disabled children is less likely to be investigated or persecuted, which means abusers know it is easier to escape consequences even if the abuse is discovered. In a copy catversion of the Nirbhaya case, a blind girl was raped, tortured and killed a case filed in the Odisha still languishes High Court of Orissa⁵⁹.

4.4.3 Institutional Violence

31. A major barrier in the field of education is the condition in institutions which house children with disabilities. A shocking case of institutionalization and neglect amounting to violence has been highlighted in the recent 'Asha Kiran' case. Asha Kiran an institution in New Delhi for intellectual and mentally ill children and adults came under the scanner of activists for its inhuman living conditions. The Delhi High Court set up an advisory committee which found far reaching abuse. Gender specific issues highlighted were that more girls than boys were abandoned and of the 143 women only 10 families kept in touch with them. Some girls who came to Asha Kiran had been sexually assaulted. Of 243 with mental health problems, 180 were women and girls⁶⁰.

4.4.4 Accessibility and Infrastructure

32. India has a National Campaign on Accessibility but there is a lack of infrastructural facilities such as toilets in mainstream co-educational and segregated schools, which has been identified as an obstacle for children with disabilities including girls with disabilities. Women from rural schools have complained that lack of toilets results in urinary infection especially as they cannot change when menstruating⁶¹. It may be highlighted that owing to cultural conditioning, lack of hygiene knowledge, inability to change sanitary napkins, need for privacy and logistic support in terms of trained female staff is needed by girl children with disabilities and when these needs are not fulfilled it leads to high dropout rates.
33. In rural areas, it is seen that the distance between home and school is generally considerable, along with poor commuting facilities. For children with disabilities, commuting even shorter distance is an issue owing to their physical condition. For girls

⁵⁸Women with Disabilities India Network 2014 n 15

⁵⁹High Court of Orissa W.P (Cri) No 1127 of 2013 filed against State of Orissa by Sashiprava Bindhani on behalf of Shanta Memorial Rehabilitation Centre.

⁶⁰Alkazi Radhika, 2016“ Brainstorming Meeting on Institutions for Children and Person with Disabilities: Thinking Alternatives 14-15 April ,New Delhi

⁶¹Consultation at Hyderabad February 2016 (Annexure 1)

with disabilities, lack of safety is an added factor justifying negligible girls with disabilities attending school. In urban areas too, where there is relatively more accessibility to commuting facilities, lack of disabled friendly services lead to dropout. Girls with disabilities also drop out from school after they attain puberty owing to infrastructural hurdles related to menstrual hygiene. The Initial India Report in para 162 and 163 reports that assistive devices have been provided to 81.26% children with special needs attending mainstream schools and 82.33% schools have been equipped with ramps and handrails and 14.82% schools have been provided with disabled friendly toilets. However there is no gender disaggregated data on the access to assistive devices. Absence of other infrastructure such as specialized equipment designed to address the need of girl students with disabilities and alternative learning models act as an added deterrent to education. In case of higher education, distance is even higher, filtering out girls with disabilities even more in education sector. Lack of residential facilities is yet another bottleneck. Even in institutions having hostel facilities, infrastructure and services are disabled unfriendly and uninviting.

4.4.5. Information and Sexuality Education

34. Women with disabilities are also denied access to information and communication, including comprehensive sexuality education, based on harmful stereotypes which assume they are asexual and thus that they do not require such information. Information is also not available in accessible formats. A lack of access to sexuality information for women with disabilities, especially women with intellectual disabilities, deaf and deafblind women, can increase their risk of sexual violence. Sex education for girl children with disabilities as well as parents and service providers may be made available. The notion that girl children with disabilities are asexual objects not capable/ deserving of any sexual preference need to be worked upon and desired education may be offered for better education of girl children with disabilities.

Niti Aayog the Apex financial planning body in the country has recognized the problems and suggested that ⁶²

1. Make schools more inclusive by addressing the barriers related to the physical environment (eg accessible toilets)
2. Develop indicators for rating schools on inclusivity

4.5 Lack Of Access To Health And Right To Life (Articles 25 , 10 & 6, 31)

35. Although all women may be denied reproductive health services, such as contraception or abortion, or face abuses in maternal health care, women with disabilities—particularly women with intellectual or psychosocial disabilities—are disproportionately subjected to practices such as forced or coerced sterilization, contraception, and abortion. Frequently, when these women are minors or are deprived of legal capacity, guardians, parents, or doctors may make the decision on their behalf. Even when they are not deprived of legal capacity, they may be pressured to undergo sterilization based on false assumptions about their sexuality and ability to parent, or based on the desire to control their menstrual cycles⁶³.

⁶²NitiAayog 2018 Strategy for New India @75 p. 158.

⁶³UN Special Rapporteur on Violence against Women,(2012) *Report of the Special Rapporteur on violence against women, its causes and consequences*, paras. 28 & 36, U.N. Doc. A/67/227

36. In 2008, the government of Maharashtra supported a policy of forcibly sterilizing “mentally challenged” women and girls in institutions as a means of ensuring “menstrual hygiene” or the elimination of periods⁶⁴.
37. The Ministry of Health issued guidelines for the sterilization of men and women in India, which are meant to advise providers (2006). These guidelines indicate that women in India who undergo sterilization should be between the ages of 22 and 49. Additionally, for sterilization to be performed, women must be “of sound state of mind so as to understand the full implications of sterilization,” and women with psychosocial disabilities “must be certified by a psychiatrist, and a statement should be given by the legal guardian/spouse regarding the soundness of the client’s state of mind.” Concerning informed consent, the guidelines indicate that the client must sign a consent form before surgery, and that spousal consent is not needed for sterilization, though the guidelines do not comment on guardian consent⁶⁵.
38. Despite these guidelines, abuses may still result from regimes that strip women with disabilities, particularly intellectual and psychosocial disabilities, of legal capacity. For instance, under the Medical Termination of Pregnancy Act, 1971 (as amended in 2002), guardians can consent to abortions for women with psychosocial disabilities⁶⁶. The Initial India Report indicates although the Supreme Court of India in 2009 found that guardians of women with “mild to moderate” intellectual disabilities cannot similarly provide consent to abortion on behalf of their wards, the Court did not strike down the provisions of the Medical Termination of Pregnancy Act, 1971, that allow for forced abortion of women with psychosocial disabilities⁶⁷. The India Initial Report talks of genetic counselling (188) with no clarity. Furthermore, the Criminal Law (Amendment) Act 2013 fails to criminalize forced or coerced sterilization or abortion for women with disabilities, meaning that it is unclear whether there are any sanctions or punishments for those who participate in these human rights violations.
39. According to women with psycho social disabilities, community violates their rights and force treatment through black magic/ exorcism/ quacks. There are instances, where they are not provided with medicines even though they know that medical interventions are necessary. According to them, rural community depends on alternative ways of treatment, like quack and traditional healers rather than medical treatment. Though men receive allopathic medicine, for women this is rarely the case as the medicine is expensive⁶⁸.

⁶⁴Misra Ashika, (2008), *Is hysterectomy the final solution?* in DNA INDIA, Jan. 30 <http://www.dnaindia.com/mumbai/report-is-hysterectomy-the-final-solution-1148211>.

⁶⁵Standards for Female and Male Sterilization Services, pg. 6, <http://nrhm.gov.in/images/pdf/guidelines/nrhm-guidelines/family-planning/std-for-sterilization-services.pdf>

⁶⁶Medical Termination of Pregnancy Act, 1971, Section 3(4)(a). <http://tcw.nic.in/Acts/MTP-Act-1971.pdf>

⁶⁷Supreme Court of India, Suchita Srivastava &Anr vs Chandigarh Administration on 28 August, 2009, available at <https://indiankanoon.org/doc/1500783/>.

⁶⁸Input from women with disabilities (Anjali), Kolkata, west Bengal, 31st October, 2017

40. Findings also suggest that reproductive health and hygiene of women with disabilities is given lowest importance. Participants cited cases where women with disabilities are not given sanitary pads. Instead, they use clothes for their menstrual cycle adversely impacting their personal hygiene. Women with physical disabilities are often seen criticized and taunted for getting pregnant. Marriage is discouraged. Sexual assault to women with disabilities is a common but underrated phenomenon, and if brought to notice, are often suppressed by family members, or are not taken seriously. Their inability to look after themselves is often highlighted and they are discouraged to bring another life into earth indicating hysterectomy as social need⁶⁹.

4.6 Minimum Access To Work And Employment (Art 27& 6, 31)

4.6.1 Limited access to livelihood opportunities

41. Para 212 to 238 of Initial India Report gives information on status of Work and Employment - Equality of Opportunity in Work and Employment (Article 27 of CRPD, RPD Act 2016, India – Chapter IV; Skill Development and Employment, Article 19 to 23). In section 214 the report elaborates about the reservations of vacancies, identification of posts, as per the Persons with Disabilities Act 1996 but does not give disaggregated data in particular about employment under the reserved posts till the date report was prepared. Section 230 of Initial India Report states that 23 Special Employment Exchanges work to assist persons with disabilities in obtaining gainful employment and another 914 Employment Exchanges that cater to persons with disabilities but no disaggregated data reflecting efficacy of such special employment exchanges is provided.
42. Filling up vacancies under 3% reservation and promotion in Employment for Persons with disabilities - On July 2016, a Supreme Court bench of Justices Chelameswar and Sapre observed that it was “disheartening” to note that low numbers of PWD, much below 3%, were in government jobs, 20 years after Persons with Disabilities Act, 1995, came into force. This judgment by SC of India explains the situation on ground regarding filling of 3% reservation status of persons with disabilities / women with disabilities. However, what is to be noted that SC judgment has not given any thrust on employment and promotion obtained by women living with disabilities under this 3% reservation policy.⁷⁰
43. An analysis of the Census of India 2011 data shows that among all women, only 1.8% of women with disabilities are in any kind of work. Of the total disabled population in India, non working women with disabilities comprise 77.4 % of all disabled women, compared to 52.8% of disabled male non workers. So this shows a large number of Women with disabilities are out of employment or livelihood opportunities. The Social Statistics division, Ministry of Statistics and Program Implementation on employment status of persons with disabilities, GOI, reports about Work status of disabled persons, but

⁶⁹Inputs from respondents from consultation with women with disabilities in Kolkata, Patna, Bhubaneswar, Koppal. (Annexure 1)

⁷⁰Financial Express 2016 “3% reservations must in jobs: Says Supreme Court <https://www.financialexpress.com/india-news/3-per-cent-reservation-to-disabled-persons-must-in-govt-job-supreme-court/306608/>. July 4.

unfortunately this report provides only a general data and no gender disaggregated data to reflect the number of women with disabilities in work⁷¹.

4.6.2 Limited Access To Financial And Other Support

44. Equal facility for Bank loan and business products for persons with disabilities – as per Section 234 of the Initial India Report a circular issued by RBI stipulates no discrimination in extending products and facilities, “including loan facilities to the physically/visually challenged applicants on grounds of disability”. While such a circular is much appreciated, it is surprising why it excluded other persons with disabilities and whether it will consider encouraging women with disabilities more to access the facility as it does to empower all women.⁷²
45. Uddyam Prabha (Incentive Scheme) by National Trust – Para 234 of the Initial India Report mentions the Uddyam Prabha scheme of National Trust which aims to promote economic activities for self employment of persons with disabilities through interest incentive upto 5% for BPL and 3% for others on loans upto 0.016 million US Dollar for 5 years. There has been no data given about how many beneficiaries under Uddyam Prabha (Incentive) Scheme and its time frame.

4.6.3 Recruitment and HR policies

46. Initial India Report mentions that the Indian State has a Scheme for Providing Employment to Persons with Disabilities in the Private Sector in order to promote employment of disabled people and provide incentives to employers who provide jobs⁷³. But the Initial India Report does not specify nor is there any data available about the extent to which the scheme really encouraged private sector companies to employ Persons with disabilities. There is no data available about employment rates of Persons with disabilities in private establishments and the levels at which they are employed.

⁷¹Government of India (2016) Disabled Persons in India, a statistical profile 2016, <http://www.mospi.gov.in>

⁷²Ref: RBI/2014-15/573, FIDD.CO.Plan.BC.54/04.09.01/2014-15 <https://rbi.org.in/scripts/NotificationUser.aspx?Id=9688>

⁷³Government of India 2008 Scheme for providing Employment to Persons with Disabilities in the Private Sector - Incentives to the Employers http://disabilityaffairs.gov.in/upload/uploadfiles/files/incentive_rev.pdf

47. SDRS, Delhi conducted a study in 2008 to evaluate employment of Persons with disabilities in public sector. The data reveals the poor status of employment of Women with disabilities in the sector⁷⁴. (Annexure 6)⁷⁵

4.6.4. Other evidence of Employment of Persons with Disabilities in Private / Business Sector –

48. Lemon Tree Hotel - Lemon Tree employs 550 disabled workers — mostly hearing- and speech-impaired but also wheelchair users and amputees. Together they account for 12 per cent of the chain’s 4,600-strong workforce. Lemon Tree Hotels has received Corporate Responsibility award for their doing. However, no specific Disability Employment Policy of Lemon Tree was found ⁷⁶.

49. Café Coffee Day -In the last published Annual Report, 2016, Café Coffee Day lists taking up of initiatives that empower communities and protect the environment under their social responsibilities. These initiatives include buying and selling ethically-sourced coffee, educating underprivileged rural youth and forging avenues to employ a number of differently abled people. However no data regarding number of Persons with

⁷⁴ Planning Commission (2008) ,Employment of Persons with Disabilities in Public Sectors in India Emerging Issues and Trends; An Evaluation Study with Special Reference to Persons with Disabilities Act (1995)

⁷⁵

Annexure 6 Status of Employment of Women with disabilities

States	Women with disability in the organization			
	Total	1 or 2	More than 2	Don't know
Bihar	41	38	81	160
Gujarat	19	110	31	160
M.P.	107	24	29	160
Rajasthan	60	70	30	160
T.N.	77	60	23	160
U.P.	49	56	55	160
WB	60	69	31	160
TOTAL	413	427	280	1120
		36.9%	38.1%	25%
				100

Planning Commission

⁷⁶Financial Times March 16, 2018 “Lemon Tree Hires ‘opportunity’ deprived people as a key part of its workforce” <https://www.ft.com/content/4257b9bc-e4e0-11e7-a685-5634466a6915>

disabilities/Women with disabilities employed in CCD was found in the Annual Report, or any specific Disability Employment Policy of CCD was available for consultation⁷⁷.

4.6.5 Issues affecting / Barriers to Livelihood, Work and employment for Women with disabilities in India

50. Women with disabilities face greater difficulties than their male counterparts or than non-disabled women in earning a living⁷⁸. The employment rate of disabled men and women compared to non-PWD is remarkably low. Women tend to be seriously under-represented in vocational training. The problems faced by Women with disabilities preventing them from participating in the labor force and acquiring a minimum of economic self-reliance include lack of requisite skills (linked to inadequate and inappropriate vocational and skill development programs), discrimination and doubts about their working capacity by employers, lack of accessibility, absence of representation of Women with disabilities in decision making positions, absence of monitoring of reservation policy in the government sector and non-implementation of affirmative action programs in the private sector⁷⁹. No data on the 30% reservation of skill development in the Skill Council for Persons with Disabilities.
51. These clearly depict the dire situation in relation to livelihood of women with disabilities in India. Given the lack of appropriate state data on employment – work- livelihood status, it is difficult even to understand the real challenges / barriers to employment of Women with disabilities.
1. A study in Odisha⁸⁰ finds that disabled women are further marginalized from livelihoods opportunities due to gender discrimination⁸¹.
 2. Discriminatory attitude of society, paternalistic attitude of society, lack of literacy, lack of social awareness, lack of political and administrative will power⁸².
 3. Women with disabilities are further disadvantaged by negative attitudes towards disability. Women with disabilities are often treated as if their particular disability has affected all their other abilities. In society's eyes they are not capable of earning an income, let alone of living independently. Physical access to the workplace from

⁷⁷<http://www.coffeeday.com/PDF/CDEL%20Annual%20Report%202015-16.pdf>

⁷⁸O'Reilly, A. (2007): The right to decent work of persons with disabilities (ILO, Geneva) in National Consultation on Disability and Livelihood – Challenges and Response Mr. Samir Ghosh, Shodhana Consultancy, Pune.

⁷⁹Women with Disabilities in India Network, October, (2012), Chapter - Work and Employment (CEDAW Article 11 and CRPD Article 27, pg – 5/121)

⁸⁰Employment rights of disabled women in India, A Study of Compliance and Impact of the Persons with Disabilities Act with Special Reference to UP, Rajasthan, Bihar, Maharashtra and Tamil Nadu. Sponsored by National Commission for Women, Government of India, submitted by Society for Disability and Rehabilitation Studies, New Delhi

⁸¹UNDP Government of India , n. 46

⁸²Rao, Indumathi (n.d.) Equity to women with disabilities in India, downloaded at :<http://v1.dpi.org/lang-n/resources/details.php?page=90>

- home, easy access within the workplace, and access to education are critically linked to the ability to earn a livelihood⁸³.
4. Poverty, Lack of Literacy, Lack of opportunities, Lack of reasonable accommodation, Discrimination and Callous attitude, Lack of Personality Development are some major reason behind no work – employment for Persons with disabilities, which is equally applicable to Women with disabilities⁸⁴.

52. The World Disability Report lists out the barriers for employment for Persons with disabilities, which are equally applicable if not more for Women with disabilities⁸⁵.

4.7. Statistics and Data collection (Art 31)

The census of India provides for gendered statistics but no other gendered data includes women with disabilities. This missing data results in neither knowledge on women's status or provision of entitlements. Universal Data on Crime (NCRB) on health (NFHS) the two major data bases on women are not inclusive.

5.0 Concluding Remarks

This report based on consultations held across India concludes that there are in general extensive abuse of their rights⁸⁶:

The major disabling barriers in the context of women with disabilities from a broad perspective are:

1. Inadequate policies and standards
2. Negative attitudes
3. Lack of provision of services.
4. Problems with service delivery
5. No funding
6. Lack of accessibility to health and education services
7. Lack of consultation and involvement
8. Lack of data and evidence
9. Intense violence perpetuated within homes, institutions, schools without any bar to age or any other intersection

Field Evidence from consultations especially on violence showed a high magnitude of violence perpetuated against them. Though some laws exist the implementation on the ground is poor

⁸³Employment Rights of Disabled Women in India : A Study of Compliance and Impact of the PDA with Special Reference to UP, Rajasthan, Bihar, Maharashtra and Tamilnadu, Society for Disability and Rehabilitation Studies, New Delhi

⁸⁴Mehrotra Amitabh, Disability and Livelihood, SPARC-India, Lucknow

⁸⁵World Health Organization and World Bank (2011), World Report on Disability.https://www.who.int/disabilities/world_report/2011/report.pdf https://www.who.int/disabilities/world_report/2011/report.pdf

⁸⁶Study carried out by Shanta Memorial Rehabilitation Centre from 2016- 2018 in 29 States consulting 1500 women with disabilities. Unpublished. Contact Reena Mohanty smrc_bbsr@hotmail.com.

and no use of Awareness provisions of the CRPD (Art. 8) has been made. The justice system shows a wide gap in this context.

6.0 List of Issues To Be Raised on Article 6 of the UNCRPD in response to the Initial India Report

Art 6 Provide Information on action taken on CEDAW concluding Remarks 2014

Article 5, 8 and 10

Provide information on awareness plans made to ensure equal access to statutory bodies such as NCW

Article 11

Provide information on steps been taken to include security issues of women with disabilities in disasters and emergencies/

Article 12 and 13

Provide efforts made to assist access justice by making the system aware of their rights

Article 15 and 16

1. Provide information on steps taken to stop harmful practices
2. Provide information on special measures India is taking to ensure that women with disabilities are protected from gender-based violence, including in the home and as a result of institutionalization.
3. Provide list of measures that have been taken to punish individuals who participate in the forced or coerced sterilization, contraception, or abortion of persons with disabilities, including those with intellectual or psychosocial disabilities who are deprived of legal capacity, and how does India plan to prevent such violations.
4. Provide information on public availability of data on such measures
5. Provide steps taken to ensure women with disabilities can communicate with and are taken seriously by police and court systems when reporting violations of their rights or serving as witnesses after the passage of the Criminal Law (Amendment) Act 2013, what. List of cases filed and completed the legal process.
6. Provide plan for including violence data in NCRB and NFHS data set
7. Has any information campaign been developed on ending violence against women with disabilities

Article 24

1. Provide data on number of toilets which are accessible in schools specifically for women with disabilities.
2. Provide information on norms of inclusion of women with disabilities in the Accessible India Campaign.
3. Provide the monitoring mechanism to check on the implementation of education related Acts and schemes meant for girls and women with disabilities.
4. Provide a list of gender disaggregated data set lists
5. Provide information on gendering data bases such as DISE.

6. Provide list of schemes that promotes rights of girls with disabilities and data on their accession.
7. Provide information on the current situation of girls/women with diverse disabilities in higher education across the country.

Article 25

1. Provide information on sexual and reproductive services on the bases of informed consent
2. Provide information on accessibility in hospitals
3. Provide information on health insurance,
4. Provide information on inclusion in JSY and RSBY
5. Information on inclusion in National Rural Health Mission

Article 26

Provide data on inclusion in rehabilitation programs as per National Policy 2006 and assistive devices as per ALIMCO Mandate.

Article 27

1. In light of the Right to Education Policy 2010, Rights of Persons with Disabilities 2016 and National Action Plan for Skill Development of Persons with Disabilities 2015, provide an outline of the plans formulated for inclusion of disabled girls and women in skilling programs across the country and data on their accessing it and placements?
2. Provide information on steps taken to make placement industry accessible and secure.
3. Provide data on participation of women with disabilities in informal sector programs like National Rural Labour Mission and MNREGS.
4. Provide the steps taken for promoting and ensuring 5% reservation for women with disabilities in the formal state employment sector.
5. Provide plans to generate and maintain gender and disability disaggregated data on persons with disabilities in different spheres of livelihood and employment be provided and data enumerated.

Article 31

Provide list of data which includes women with disabilities

7.0 RECOMMENDATIONS ON LIST OF ISSUES

Data

1. Include women with disabilities in all gendered and women, specific data sets such as NCRB, NFHS.
2. Improve data collection on persons with disabilities in general, and women with disabilities in particular, including on education, work and gender-based violence and sexual and reproductive health care for women with disabilities. Ensure that such data is disaggregated by both gender and disability, as required by CRPD Article 31.⁸⁷
3. Develop disability gendered indicators to develop a strong Monitoring mechanism in place to monitor the implementing bodies and public service providers

Awareness

⁸⁷See CRPD, arts. 6 & 33.

4. Undertake a public information campaign that depicts women with disabilities as contributors to society and holders of rights. Raise awareness about and stigmatize harassment of and violence against women with disabilities in homes, in public, and in institutions.
5. Conduct a public information campaign to create awareness amongst women with disabilities on their rights
6. Train Women's Commissions at National and State, Child Commissions on issues related to women with disabilities.

**Freedom From Exploitation, Violence And Abuse (Articles
&
Freedom Of Torture Or Cruel Inhuman Or Derogatory Treatment Or Punishment**

1. Enforce 2014 Health Ministry Guidelines on the use of "Two Finger Tests" as a degrading practice.
2. Train Doctors special educators and hospitals on the Ministry of Health and Family Welfare Guidelines and Protocols for Medico-Legal Care for survivors and Victims of Sexual Violence.
3. Expand National and State Legal Services Authority to all women with disabilities.
4. Increase the number of protection officers in all regions trained collect information about incidents of domestic violence and other gender-based violence and to assist women with disabilities who are victims or witnesses to such violence through the justice system.⁸⁸
5. Ensure that Accessible India includes shelters and other support services are accessible to all women with disabilities.
6. End the forced institutionalization of women with disabilities by removing laws that allow for forced institutionalization based on disability and by establishing and raising awareness of care and support services in their local communities. Prohibit forced treatment of women with disabilities inside and outside institutions and ensure effective monitoring of institutions.⁸⁹
7. 10% Compensation from Nirbhaya Fund to be earmarked for women with disabilities.
8. Disability be mentioned in all FIRs submitted at police stations

Education

1. It becomes pertinent to provide barrier free education to girls with disabilities in order to improve their living condition and quality of life. Toilets must be a priority in any infrastructure development by the State (eg. Swachh Bharat Campaign)
2. Earmark 5% budget for accessible toilets
3. Foster synergy between the Departments of Women and Child and Department of Empowerment of Persons with Disabilities and Ministry of Human Resource Development Ensure collection of gender disaggregated disability data related to education in order to understand and analyze the existing gap.
4. Develop and train special educators to assist women with disabilities in the justice system.

⁸⁸Manjoo Rashida, (2014) n. 14

⁸⁹See CRPD (2015), arts. 14 & 19; CRPD Committee, *Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of the person*

5. Scholarship and related incentives such as free books, uniform and accessories related to specific disabilities be made specifically available to girls with disabilities.
6. Prioritize sensitization of parents, teachers and other related service providers to mainstream children with disabilities in educational institutions.

Work And Employment

Develop an appropriate mix of mainstream and specific opportunities for inclusion of women with disabilities in livelihood and income generation programs

1. Make public data for 30% of skill building schemes for women with disabilities.
2. Establish dedicated skill training centres for women with disabilities and linkage to private sector.
3. National Action Plan for Skill Development should formulate specific assistance package to encourage effective participation of Women with disabilities to improve their employability and sustainable retention in their job.
4. Formation of Advisory groups by Central & state government (MSJE) consisting of Persons with disabilities & Women with disabilities (equal number representation), departmental officials, policy makers, technical experts, planners and administrators to put in place policies and programs to include women with disabilities in livelihood and income generation;
5. Facilitate modifications in the design of machinery, workstation and work environment necessary for the disabled women to operate without barriers in training centers/ factories/ industries/ offices etc.
6. Development and dissemination of guidelines on the livelihood program's approach to disability to all stakeholders - implementing agencies, service providers, judiciary, administration and any such bodies
7. Timely allocation of the agreed budget for the livelihood development activities of women with disabilities to all the implementing agencies
8. Regular sensitization plans & programs for all officials & staff in government as well as private agencies
9. Mandatory Coverage of women with disabilities in poverty alleviation programs and thoroughly monitored so that they get their due share of 3 % as provided under statutory provisions.
10. Develop appropriate home-based income generation programs for the women with disabilities. The system of coaching for employment may also be encouraged for women with disabilities and their caregivers.
11. Provide assistance through appropriate agencies—such as Marketing Boards, District Rural Development Agencies (DRDAs), Private Agencies and Non Governmental Organizations in marketing of goods and services produced by women with disabilities.
12. Continuous awareness campaigns in all media and by all Ministries and all government departments
13. To enhance the employment opportunities for the women with disabilities: The government may initiate a dialogue with private sector organizations to help the women with disabilities in getting employment.

