

**Parallel Report of India
on the
Convention on the Rights of Persons
with Disabilities (CRPD)**

National Disability Network (NDN)

and

**National Committee on the Rights of Persons with
Disabilities (NCRPD)**

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Introduction

1. India ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in the year 2007. The First Country Report which was due in 2009 was submitted by the Government of India in June, 2015. In 2009, the National Disability Network (NDN)¹ and the National Committee on the Rights of Persons with Disabilities (NCRPD)² initiated the preparation of the Alternate/Parallel Report. As part of this preparation, a questionnaire was given to select top leaders in the disability sector, representing different disabilities and regions, in order to collect and collate information regarding their satisfaction with respect to the implementation of the CRPD in India. National Centre for Promotion of Employment for Disabled People (NCPEDP) then collaborated with International Disability Alliance (IDA) to train NDN Partners in understanding the provisions of the CRPD and the role they could play in monitoring its implementation in the country. The first training was conducted by IDA in 2010. At that training, an attempt was made to respond to the upcoming Universal Periodic Review (UPR), and a draft was made, discussed and submitted. The first source text towards a Parallel Report was compiled by NCPEDP and Diversity and Equal Opportunity Centre (DEOC), a member of NCRPD, entitled, 'Key Issues in India' in 2011.
2. Furthermore, several opportunities for consultations, international exchanges and exposure to CRPD related developments in other countries, visits to the UN to have an experience of the functioning of the meetings of the Monitoring Committees, further trainings on the CRPD through intensive IDA facilitated workshops, budget analysis trainings and so on, were facilitated by NCPEDP in 2011 and 2012.
3. Sub-groups were formed to work on various aspects of the Report, particularly for analysing the legal aspects involved and for constructing a suitable budget analysis. The sub-group working on the legal aspects developed the following Reports.
 - a) 'Review of Indian Case Law, since India's Ratification of the UN Convention on the Rights of Persons with Disabilities'.³
 - b) 'Incapacity Laws in India - A compilation of national laws providing for the incapacity of persons with disabilities'.⁴

¹ National Disability Network (NDN) formed in 1999 by NCPEDP, is a network of DPOs and NGOs from across the country to disseminate information and to advocate for the rights of persons with disabilities

² A Committee set up by NCPEDP to catalyse the implementation of the CRPD in the country, which includes NDN Members and select disability professionals.

³ Report prepared by Rahul Cherman of Inclusive Planet, the Centre for Disability Law and Policy and the Centre for Law and Policy Research in 2011 for the purpose of the CRPD Monitoring Report.

4. NCPEDP and IDA collaborated with the Centre for Budget and Governance Accountability (CBGA) for analysing the budget allocation and utilisation in the cause of disability by the various Ministries of the Government. Another sub-group was entrusted with the task of analysing the budgets. The members of this sub-group were trained by CBGA and IDA. They prepared the Report titled, ‘Analysing the Indian Public Financing System from the Perspectives of the Rights of Persons with Disabilities – A first step towards CRPD Compliant Budget Advocacy’.
5. To discuss these Reports in the larger group, a three-day intensive consultation workshop was held in New Delhi in 2011, facilitated by IDA and organised by NCPEDP, which was attended by several Disabled People’s Organisations (DPOs) and Non Government Organisations (NGOs). After the workshop, recommendations were made by the larger group on the Reports. In order to compile the information article-wise, five Core Groups were formed. After this, Bapu Trust, a member of NCRPD, then put together and edited this article-wise information into a single report which was called the ‘Monitoring Report of Civil Society, Zero Draft’ in 2013.⁵
6. The First Country Report of India on the Status of Disability, 2015 (henceforth referred to as the First Country Report, 2015) which was finally submitted in 2015 was also analysed.
7. This document includes select issues and recommendations for effective implementation of the CRPD.

Articles 1 to 5: 1: Purpose 2: Definitions, 3: General principles, 4: General obligations and 5: Equality and non-discrimination

8. Articles 1 to 5 are general Articles and hence have been taken together. Article 4 mandates Governments to take legislative measures for the implementation of rights recognised in the Convention. A landmark development in this regard was the passage of The Rights of Persons with Disabilities Act (RPD) in December, 2016. A long standing demand of the disability sector, to repeal the old Act of 1995 and to enact a rights based legislation in line with the provisions in the CRPD, was fulfilled. This Act has adopted the CRPD definition of disability for non discrimination. It covers the private sector, mentions timelines for making

⁴ Prepared by Bhargavi Davar of Bapu Trust, Pune, and Rahul Cherian of Inclusive Planet and the Center for Law and Society, Chennai.

⁵ Convenor: Mr. Javed Abidi; Capacity Building: Alexandre Cote; Writers: Bhargavi Davar, Shivani Gupta, Meenakshi Balasubramaniam, Sudha Ramamoorthy and Rama Chari.

buildings and services accessible and provides for the right to home and family, reproductive rights, right to live in a community, protection from abuse and violence, access to justice and other rights. However, there are concerns that the Act does not fully comply with the CRPD in certain aspects and that there is some dilution of some of the rights. These aspects include the provision of limited guardianship, not mentioning accessibility as a right, not stating the right to vote/stand for elections explicitly, allowing for the termination of the pregnancy of a woman with severe disability without her express consent and a few others.

9. With regard to the obligation to review and amend other legislations, in order to make them compliant with the CRPD, there has not been any progress. Some of the issues in these other legislations are mentioned below.
 - a) Constitution of India. It is mentioned in the First Country Report that ‘disability’ can be read into the very framework of Article 15 and Article 16 (2) of the Constitution. However, the fact that ‘disability’ is not explicitly included as one of the grounds for non-discrimination makes this position uncertain. Moreover, the denial of reasonable accommodation would not be seen as discrimination within the framework of the Constitution as it stands today.⁶
 - b) Article 326 of the Constitution allows for the disqualification of persons with ‘unsound mind’ from being registered as voters for elections. The disability sector has objected to the vague phrase ‘unsoundness of mind’ which is commonly used to deprive mentally and intellectually impaired citizens from exercising their voting rights or contesting elections. The RPD Act, 2016 only mentions the access to voting but does not provide for the right to vote and the right to stand for elections.
 - c) Other Laws: The Legal Review team of the National Disability Network found the discrimination against persons with disabilities on grounds of legal incapacity in over 150 laws (civil, criminal, family, taxation, military, banking and others). While a larger number of laws apply solely to persons of ‘unsound mind’ or to both ‘lunatics’ and ‘idiots’, an equal number of laws apply to a wider range of people with disabilities. For example, the words, ‘physical and mental defect’, ‘incapacity’, ‘physical and mental infirmity’, ‘deaf mute’, ‘blind’, ‘contagious Leprosy’, ‘Leprosy cured’, ‘Epilepsy’ are found pervasively in the laws in the context of legal incapacity. More general categories

⁶ The Constitution of India vs the UNCRPD – An Overview, for Inclusive Planet Centre for Disability Law and Policy, by Dr. Sanjay Jain, Jino K Jose and Rahul Cherian, February, 2012, e-mailed to NCRPD Members by Rahul Cherian on 6th February, 2012.

of ‘incapable due to serious illness’, ‘found unfit to act by a competent court’, etc. are also found.⁷

d) Under the State Beggary Acts, the medical examination, arrest and detention of persons affected by Leprosy for an unspecified duration are provided, which are clearly discriminatory.⁸

10. One of the basic measures needed for the implementation of the rights present in the CRPD is to allocate an adequate budget. However, a simple analysis of the spending incurred, on persons with disabilities, in the last three years (2013-14, 2014-15, 2015-16) showed that it had stagnated at 0.02 percent of the GDP.⁹

Recommendations

11. Recommendations for Articles 1 to 5.

a) The Government (Central and State) needs to review all the relevant laws and programmes and amend them suitably, in order to ensure that they are in line with the CRPD, in a time bound manner. Any new law being formulated in the country needs to be in line with the CRPD.

b) Adequate resources have to be allocated for implementing The RPD Act, 2016. Every relevant Ministry should allocate and maintain a disability budget which should be at least 5 percent of the total budget allocated to it.

Article 6: Women with disabilities

12. According to the Population Census, 2011, women with disabilities constitute about 44 percent of the total population with disability. Out of the total number of literates with disabilities, only 36 percent are women. And, among the working people with disabilities, only 25 percent are women.¹⁰

13. Paragraph 53 of the First Country Report, 2015, mentions the Protection of Domestic Violence Act (PDV). This Act does not address the needs of women with disabilities. Furthermore, other women specific and related legislations and programmes have not been

⁷ Page 18, Monitoring Report of Civil Society, Zero Draft, 2013, NCPEDP and IDA, Compiled and Edited by Bhargavi Davar, Bapu Trust accessed at <http://www.dnis.org/>.

⁸ Report No.256 Eliminating Discrimination Against Persons Affected by Leprosy, April 2015, Law Commission of India, accessed from <http://lawcommissionofindia.nic.in/reports/Report256.pdf>, on 15th December 2016.

⁹ Infographics, ‘Specific Expenditure Related to Persons with Disabilities - India’, 2016, Equals, Centre for Promotion for Social Justice, Chennai.

¹⁰ Population Census 2011 accessed at http://www.censusindia.gov.in/2011census/population_enumeration.html on 29th November 2015.

appropriately amended to address the rights of women with disabilities. For instance, in the National Mission for Empowerment of Women, which was started in 2011, women with disabilities are mentioned only once and that too under the category of women and health.¹¹ There are many other focus areas of the mission, for example the dissemination of information, skill development, Self Help Groups (SHGs), preventing crime against women etc., where the needs of women with disabilities have just not been taken into account.

14. There is a lack of relevant data on disability in general. And, even when disability data is collected, it is not gender segregated. Some examples of this lack are given below.
 - a) It is known that 44.7 percent of people with disabilities have disability certificates in India. There is no data disaggregation as to how many disabled females have disability certificates.¹²
 - b) The Annual Report of The Ministry of Women and Child Development has not reported on the number of girl/woman beneficiaries under each of their schemes. One of the schemes, 'Swadhar', which is meant for Women in Difficult Circumstances and which covers mentally disabled women as one of its target groups, there is no data at all on the number of women who have accessed the scheme.¹³
 - c) The National Crime Record Bureau (NCRB) records facts and figures concerning crimes against women. But no records are kept specific to women with disabilities.

Recommendations

15. Recommendations for Article 6.
 - a) Amend all programmes for women to create specific provisions for promoting the rights and welfare of girls and women with disabilities and implement them meaningfully. Have specific programmes to facilitate women with disabilities so that they can access the various programmes and schemes meant for women.
 - b) Gender segregated disability data should be collected by all relevant Ministries.
 - c) The Ministry of Women and Child Development should set up a Disability Cell to ensure that women with disabilities are included in all programmes conducted by it.

¹¹ Joint Submission on India by Disabled People's International India (DPI India) to the UN Committee on the Elimination of Discrimination against Women Pre-session Working Group for the 58th session.

¹² Annual Report - 2014-15, Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment.

¹³ Sexual rights of disabled women, Live Mint, 3rd December 2014 accessed at <http://www.livemint.com/Politics/FDPpol4IJ0pX037spUU1kL/Sexual-rights-of-disabled-women.html> on 25th November 2015.

Article 7: Children with disabilities

16. As per the latest Population Census, 2011, there are 8 million children with disabilities in the age group 0-19 in the country, which is 29.3 percent of the total population with disabilities.¹⁴ Other estimates suggest that there are over 30 million children with disabilities in the country.
17. It is an alarming fact that about 70,000 children with disabilities (1.3 percent) below the age of 14 years are married, widowed, divorced, or separated. The number of children with disabilities who are working, in the age group 0-14 years, is 228,000 (which is 4 percent of the total number of children in that age group).¹⁵
18. The First Country Report, 2015 also lists the various laws and policies where a reference to children with disabilities has been made. However, no mention has been made of the specific actions which should have been taken to mainstream children with disabilities and to promote equal rights. Some examples of how inadequate the laws and systems are, to address the needs of children with disabilities, are given below:
 - a) Although the Juvenile Justice (Care and Protection of Children) Act, amended in 2006, identifies children with disabilities without family care as a group of children needing care and protection,¹⁶ there is nothing further in the Act to acknowledge the evolving capacities of the child, the supports and reasonable accommodation necessary for the child with disabilities to participate in legal proceedings or in the provision of care and protection.
 - b) There are elaborate quasi-judicial systems of Child Welfare Committees, Child-lines (a countrywide help-line for children in distress), the State and District child protection societies, adoption agencies and homes. Unfortunately, experience and study show that none of these agencies know how to respond to children with disabilities.¹⁷
 - c) The Integrated Child Protection Scheme (ICPS) makes specific references to children with disabilities only in the context of institutionalisation.¹⁸

¹⁴ Table C 20, Disabled Population by type of Disability, Age and Sex, Census 2011, accessed at <http://www.censusindia.gov.in/2011census/C-series/c-20.html> on 19th September, 2016.

¹⁵ C-21, Disabled Population by type of disability, marital status, age and sex, accessed at http://www.censusindia.gov.in/2011census/population_enumeration.html on 19th September, 2016.

¹⁶ Section 2.1 of the Juvenile Justice Act 2006, accessed from <http://wcd.nic.in/act/2315> on 21st December, 2016.

¹⁷ A pilot Study on Violence and Discrimination faced by Children with Disabilities Conducted by AARTH-ASTHA for Plan India accessed from

http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/Ind/INT_CRC_ICO_Ind_15695_E.pdf on 21st December, 2016.

¹⁸ Monitoring Report of Civil Society, Zero Draft, 2013, NCPEDP and IDA, Compiled and Edited by Bhargavi Davar, Bapu Trust accessed at <http://www.dnis.org/> on 25th November 2015.

19. The Guidelines for Adoption¹⁹ states that, “In spite of best efforts, some special needs children do not get adopted and have to remain in institutions and such children should be shifted by the adoption agencies to specialised institutions in case such institutions are available in the State.” The living conditions of most of these institutions can be appalling. . The serious human rights violations perpetrated by them and the conditions of shelter homes for children with disabilities have been reported sporadically in the media from all parts of the country. For example, it was reported that 37 children died in one institution of the Asha Kiran Complex in Delhi over a period of four years (2004-2008) and that proper medical care and treatment could have saved many lives. Furthermore, a post-mortem analysis was avoided in most cases. This clearly contradicts the law of the land, as the concerned children were inmates living under government custody.²⁰ In 2017, when a surprise inspection was done, it was found that the condition of the institution had not improved.²¹
20. The Child Rights Convention (CRC) Parallel Report, submitted by NDN, the Indian chapter of DPI,²² has detailed how children with disabilities continue to be excluded in the flagship programmes for child care and development. Way back in 2001, the Supreme Court had directed the Government to “universalise” Integrated Child Development Services (ICDS) and make eight food related schemes into legal entitlements, which included the mid-day meal scheme. However, even till date, it is seen that children with disabilities continue to remain excluded from these programmes. As per the Parallel Report to the CRC Committee by the NDN,
- a) The only specific direction in the guidelines of the ICDS Scheme is for the *anganwadi* worker to conduct a survey of children with disabilities in the community and to refer the child with disability to the nearest Primary Health Centre (PHC).
 - b) The mid-day meal scheme has not been expanded to reach out to children with disabilities enrolled in special schools, those in home based education and the very large numbers who are out of school. Children with disabilities in school often report that they don't

¹⁹ Section 9, Point 5 of Guidelines for Adoption <http://www.mphc.gov.in/pdf/j3-060314.pdf> accessed on 29th November 2015.

²⁰ Report received in response to RTI enquiry vide letter no. 40/RTI/2/DD(FAS)/DSW/2008/8084 dated 10/08/08 and A Report on the Visit (1.02.2010) of Asha Kiran Complex, Delhi Commission for Protection of Child Rights, Government of NCT of Delhi.

²¹ DCW Probe Reveals Shocking Conditions at Asha Kiran Home For Persons With Mental Disabilities, The Wire, on 6th February 2017 accessed at <https://thewire.in/106235/asha-kiran-conditions-dcw/> on 21st February 2017.

²² Alternative Report on India to the CRC Committee on the Rights of Children with Disabilities, submitted by National Disability Network, Indian Chapter of DPO, Information gathering and Compilation of Report by AARTH-ASTHA

receive the support needed to collect or to eat their meals or they have to completely depend on their classmates to access their mid day meal.²³

Recommendations

21. Recommendations for Article 7.
 - a) Amend the existing child laws/policies and programmes to not only include children with disabilities but to also ensure that provisions for, and explicit mention of, accessibility and accommodation for all services and support systems be provided.
 - b) The Ministry of Women and Child Development should have focused measures to include children with disabilities in all their programmes and to collect and maintain quantitative and qualitative data of the number of children with disabilities covered by their schemes.

Article 8: Awareness-raising

22. As listed in the First Country Report, 2015, a few campaigns like *Badthe Kadam*, have been organised by the Government. However, these campaigns have been conducted in a piece-meal fashion and the impact therefore has been very limited. Another serious issue is that very little has been done to include disability awareness either in the training curriculum of various professional courses or while training government officials providing various services. There are several reports indicating that even Disability Commissioners themselves are not aware of the rights of persons with disabilities.²⁴
23. Another development recently which has been objected to strongly by the disability sector is the renaming of the Department of Empowerment of Persons with Disabilities to *Divyangjan Sashaktikaran Vibhag* in 2016. The term *divyangjan* in Hindi means ‘people with divine organs’. The Government has taken no action regarding this in spite of the objections raised by the disability sector. Now appropriate terminology plays a very crucial role in creating awareness. Patronising terms like *divyangjan* promotes only a charitable mindset and an unfortunate stereotyping of people with disabilities.

²³ Chapter III, Children Who Are Attending School, Third Annual Report on the Status of Children with disabilities Under The Right to Education Act, AARTH-ASTHA in collaboration with AAINA and SPARC-INDIA.

²⁴ Right to Information for People with Disability, A Handbook / Guide, developed by Sakshi Trust and Action Aid India, 23rd August, 2011, accessed at http://punarbhava.in/index.php?option=com_content&view=article&id=301&Itemid=184 on 13th February, 2014.

Recommendations

24. Recommendations for Article 8.
 - a) The use of the term *divyangjan* should be discontinued. For determining the appropriate social model terminologies in the Hindi language, there could be a think tank set up for debating and finalising the language structures to be used. However, till that time, the earlier term *viklangjan* could be continued with.
 - b) Each concerned Ministry should allocate a part of their budget for information dissemination on various programmes (including in accessible formats) and for sensitising and training their personnel on disability related issues.

Article 9: Accessibility

25. The recently passed The RPD Act, 2016 has mandated that all public buildings (including those owned by the private sector and are for public use) should be made accessible as per standards. It says that the permission to build and the certificate of completion would not be given if they do not meet those standards. The Act also provides timelines to make the existing infrastructure and services accessible. The Act has also provided for the Government to take steps for ensuring access to roads, accessibility in the various modes of transportation, that all content be available in accessible formats, access to electronic media, that electronic goods and consumer goods be made available in universal design and so on.
26. In paragraph 78 of the First Country Report, 2015, it is mentioned that the National Building Code (NBC), 2005 has “incorporated detailed provisions for construction of buildings and made accessible design an inherent part of all plans”. This is factually incorrect. The accessibility provisions are in the annexure of the NBC 2005 entitled, “Annexure D: Special requirements for Planning of Public Buildings Meant for use of physically challenged persons”. This annexure is seen by architects and planners only while designing special schools or rehabilitation centres. However, NCPEDP put forth the demand that the revision of NBC that is taking place should be based on universal design principles and should include accessibility in all relevant chapters rather than being an annexure. It has also insisted that the standards should be updated in line with ISO standards. To facilitate this, detailed suggestions were given to the Bureau of Indian Standards. The final updated version has still not been released (as of February 2017).

27. In paragraph 79 of the First Country Report, 2015, it is mentioned that a national centre will be established to facilitate and support the development of universal design principles and promote a barrier free environment. This proposal was in the XI Five Year Plan (2007- 2012) and in the XII Plan (2012-2017). As of February 2017, this centre has not been established.
28. The Government has put forth an ambitious plan to build 100 smart cities, features of which will be later replicated across all cities in India. The blueprint includes the creation of walkable localities, efficient and smart transportation, e-governance, housing and so on. However, accessibility for people with disabilities has not been mentioned at all in the plan/guidelines. If this is not stated explicitly, it is very likely that it would be missed.²⁵
29. Accessible transportation is another major concern. There has been some piece-meal efforts made in this regard. However, buses, three-wheelers and taxis which are mainly used for local travel in cities still remain inaccessible for persons with disabilities. Now most rural areas too are connected only by road transport and these are mostly run by private individuals/firms who also do not consider accessibility as a priority. Even though there is a demand and need, there appears to be no policies/plans by the State Governments to ensure and promote accessibility in road transportation. A positive development that is being mooted in select cities is metro rail connectivity and these have accessibility features. However, the approach roads to and from the stations have been found to be inaccessible, leading therefore to many disabled people not being able to use the metro rail.
30. In paragraph 81 of the First Country Report, 2015, it is reported that efforts have been made to make certain categories of railway stations disabled friendly. However, an access audit of two of the “renovated” stations revealed that they continue to be inaccessible for persons with disabilities.²⁶ Another major issue is the inaccessibility of coaches which has not been addressed so far. Recently, a girl with disability sent a petition to the Prime Minister, which went viral on the social media, stating that she was "groped by porters" while she was being assisted into the train and demanded that entry into trains be made accessible. There has been no effort to look into the matter as per the media report.²⁷

²⁵ Smart Cities, Mission Statement and Guidelines, June 2015, accessed at <http://smartcities.gov.in/writereaddata/SmartCityGuidelines.pdf> on 6th December 2015.

²⁶ Indian Railways should be more compassionate, *Mail Today*, 17 July 2016, accessed at <https://in.news.yahoo.com/indian-railways-more-compassionate-00000845.html> on 13th December, 2016.

²⁷ PMO ignored 'open letter' and complaint made by disabled girl, instead passed the buck to MEA, 22nd January 2017. accessed at <http://indiatoday.intoday.in/story/pmo-ignored-open-letter-and-complain-made-by-disabled-girl-instead-passed-the-buck-to-mea/1/863411.html> on 24th January, 2017.

31. It is mentioned in paragraph 83 of the First Country Report, 2015, that, as per their policy, all government websites would be made accessible as per WCAG 2.0. This policy was formulated in 2009. However, even after eight years of the policy announcement, it is seen that most websites still remain inaccessible.²⁸
32. Considering even the few websites which have been made accessible, it is seen that when new content gets added or when there is a redesigning of pages, accessibility standards are not being considered. For example, the website of the Department of Empowerment of Persons with Disabilities, which was made accessible, has a lot of inaccessible content which has been added later.
33. Visual media remains largely inaccessible. As a result of sustained advocacy by the disability sector, the Ministry of Information and Broadcasting finally issued a Circular in 2015 regarding the captioning and audio description of television news/programmes. However, there has been no progress (as on February 2017) as far as implementation is concerned. As per the views of disability activists, it will take time as far as actual implementation is concerned. According to them, the Ministry has completely overlooked sign language interpretation! They are urging the Government to at least mandate one news bulletin at prime time every day, with sign language interpretation, to begin with.

Recommendations

34. Recommendations for Article 9.
 - a) Government should take steps to implement the accessibility related clauses of The RPD Act 2016. The various procedures for granting permissions, giving completion certificates, and so on have to be aligned with the new legislation.
 - b) The public procurement policy should be modified to ensure the purchase of accessible products and services.

Article 10: Right to life

35. Although Article 21 of the Indian Constitution provides for the 'right to life' to all its citizens, ground realities leave a lot to be desired. The Right to life for people with disabilities

²⁸ 'We tested 18 Government Apps, and most are not fully accessible to the disabled', *Factor Daily*, 31st August 2016, accessed at, the Centre for Internet and Society, <http://cis-india.org/accessibility/blog/factor-daily-august-31-2016-nirmita-narasimhan-we-tested-18-government-apps-most-are-not-fully-accessible-to-disabled>.

is not explicitly stated even in the disability laws themselves. Even the new The RPD Act, 2016, does not explicitly mention the right to life.

36. There are several cases of children and elderly people with disabilities being abandoned, abused and even killed.²⁹ There are many cases across India where parents of people with disabilities or people with disabilities themselves have written to the State asking for permission to take recourse to mercy killing/death.³⁰ Many people who take these extreme steps have said that they want the State to intervene and give support for medical treatment, rehabilitation, etc. No such schemes are available in the country right now for people with disabilities (particularly those with severe conditions requiring prolonged medical treatment and families comprising of more than one person with disability).
37. The right to food can be seen as an implication of the fundamental “right to life”, since food is essential for survival. An Interim Order of the Supreme Court, in writ petition, on the right to food was issued on the 28th of November, 2001 which converted the benefits of the eight food related schemes into legal entitlements.³¹ Further, the legislation, The National Food Security Act, was enacted in 2013 to make these entitlements the law of the land. However, people with disabilities are still excluded from all the food related schemes. For example, the mid day meal, which is available to all children going to school, does not reach many children with disabilities who are not either attending school or are in home based programmes.

Recommendations

38. Recommendations for Article 10.
 - a) The Government should formulate schemes to promote the right to life in terms of adequate financial support, sensitisation of the medical fraternity, judiciary and rehabilitation professionals, providing community support and so on.

²⁹ Grandma killed disabled toddler, cooked up kidnap story: Police, The Times of India City, 17th August 2014, accessed at <http://timesofindia.indiatimes.com/city/mumbai/Grandma-killed-disabled-toddler-cooked-up-kidnap-story-Police/articleshow/40327246.cms>; <http://www.thehindu.com/news/cities/chennai/thalaikoothal-death-in-26-shades/article8251311.ece> on 26th September, 2016.

³⁰ ‘Either Allah cures them or takes them back’, The Indian Express, 1st June 2015 accessed at <http://indianexpress.com/article/india/india-others/either-allah-cures-them-or-takes-them-back/> accessed on 23rd November, 2015.

³¹ (1) Public Distribution System (PDS); (2) Antyodaya Anna Yojana (AAY); (3) National Programme of Nutritional Support to Primary Education, also known as “Mid-Day Meals scheme”; (4) Integrated Child Development Services (ICDS); (5) Annapurna; (6) National Old Age Pension Scheme (NOAPS); (7) National Maternity Benefit Scheme (NMBS); and (8) National Family Benefit Scheme (NFBS).

Article 11: Situations of risk and humanitarian emergencies

39. The First Country Report, 2015, largely focuses on what should be done during emergency situations rather than what has been done or what systems are in place for people with disabilities. There is very little information on how disaster preparedness has been made inclusive.
40. The National Disaster Management Authority (NDMA) provides data on the number of fatalities which occur during natural disasters but no data is provided on the number of people who have acquired disabilities and the number of people with disabilities who have been affected in such situations.³²
41. There are specific clauses in The RPD Act, 2016, providing for “equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters.” This is a positive aspect and needs to be implemented.

Recommendations

42. Recommendations for Article 11.
 - a) The Home Ministry should undertake an Audit of the Disaster Preparedness and Management plans and processes and make them inclusive in a time bound manner.
 - b) The training of personnel related to disaster management in rural and urban areas should include the concerns of persons with disabilities. Persons with disabilities themselves should be trained in handling emergency situations in schools, colleges, workplaces, camps, and so on.

Article 12: Equal recognition before the law

43. The RPD Act, 2016 states that “persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law”. It also mentions that persons with disabilities have the right, equally with others, to own or inherit property, control their financial affairs and have access to bank loans, etc. It provides for “limited guardianship” which allows the guardian of a person with disability to take a decision on behalf of that person if she/he is unable to take a decision in spite of the support given to her/him. Some disability rights

³² National Disaster Management Authority, Disaster data and statistics, Some major disasters in India, accessed at <http://www.ndma.gov.in/en/disaster-data-statistics.html> on 14th February, 2017.

activists feel that the clause providing limited guardianship is contrary to the clause on legal capacity and does not provide the means for putting in place the necessary safeguards needed to prevent or detect possible abuse of authority by the person providing support. However, parents of people with intellectual disabilities supported the need to retain the guardianship clause.

Recommendations

44. Recommendations for Article 12.
 - a) There seems to be some ambiguity in the clauses in The RPD Act, 2016 regarding legal capacity. There is also a conflict within the disability sector itself about the role of guardianship. Therefore, in order to build a consensus within the disability community on this topic, there should be more discussions held among the various stakeholders, a greater engagement with people with disability with experience on this issue and suitable studies undertaken in order to throw light on the matter.
 - b) Proper safeguards as mentioned in the CRPD need to be put in place.

Article 13: Access to justice

45. As mentioned in the First Country Report, 2015, (paragraphs 106 and 107), there are provisions in the Indian Evidence Act and Code of Criminal Procedure, for people who have difficulty communicating, to have a suitable interpretation facility, for example to use signs or writing and so on, for making their representation in a court. However, they do not detail out the procedure for availing these services.
46. In the First Country Report, 2015 (paragraph 104) it is mentioned that the “Supreme Court of India is accessible along with other Courts”. This is far from the truth. It is not clear as to how these Courts have been certified to be accessible. There are innumerable instances of people with disabilities having difficulty accessing courts due to infrastructure inaccessibility. One report highlighted how a person with disability had to crawl to the fifth floor to reach the courtroom.³³

³³ Disabled accused made to crawl to fifth-floor court, August 6, 2015, accessed at <http://timesofindia.indiatimes.com/city/delhi/Disabled-accused-made-to-crawl-to-fifth-floor-court/articleshow/48367771.cms> on 31st January 2017.

47. As per the First Country Report, 2015³⁴ on grievance redressal by the Office of the Chief Commissioner for Persons with Disabilities, it said that, in 2014-15, only 2164 cases were received. Given the fact that disabled people belong to the most vulnerable and marginalised sections of society, the figure of 2164 is almost negligible! Surprisingly, the First Country Report, 2015 has not mentioned the number of cases received in the State Commissions at all. Now, as per the Annual Report, 2012-13, the number of cases received in the States has been very low. For example, Andhra Pradesh appeared to have had just 4 cases³⁵, Karnataka with just 24 cases³⁶ and some States have not given the number of cases received indicating that there may have been no cases. One State that seems to have done comparatively better was Jharkhand with 10,496 cases which indicates the potential of an effective, functioning Commission.³⁷

Recommendations

48. Recommendations for Article 13.
- a) The RPD Act, 2016 has a section, Access to justice, which mandates that the National Legal Services Authority and the State Legal Services Authorities should make provisions for reasonable accommodation. There are also provisions in the Act for making public documents available in accessible formats. These need to be implemented effectively by detailing the procedures for availing accommodation and having the necessary trained human resources needed to provide any support that may be required.
 - b) Include sensitisation programmes for all staff in the police and judicial administration, as part of their training curriculum.

Article 14: Liberty and security of person

49. There are many institutions in India for people with psychosocial disabilities and intellectual disabilities which deprive these persons of their liberty on the basis of disability.³⁸ For example, 'Beggars' Homes' present in over 17 States of India, use penal, and often inhuman methods and 'arrest without warrant', based on prevalent beggary laws. Many 'beggars' homes' have been converted into 'old age homes' or 'disabled homes', where people who

³⁴ Page 33, Table 13.1, The First Country Report on the CRPD, 2015

³⁵ Page 29, Annual Report, Chief Commissioner for Persons with Disabilities (CCPD), 2012-13.

³⁶ Page 66, Annual Report, Chief Commissioner for Persons with Disabilities (CCPD), 2012-13

http://www.ccdisabilities.nic.in/content/en/docs/AR13_E.pdf

³⁷ Page 64, Annual Report, Chief Commissioner for Persons with Disabilities (CCPD), 2012-13

³⁸ Monitoring Report of Civil Society, Zero Draft, 2013, NCPEDP and IDA, Compiled and Edited by Bhargavi Davar, Bapu Trust accessed at <http://www.dnis.org/>

are homeless, elderly or destitute and people with disabilities are “lumped” together without any reasonable accommodation, services or care.³⁹ The Beggary Act does not provide for minimum standards, safeguards or monitoring. A section of human rights activists and academics are asking for suitable change and repeal of the Act.⁴⁰ The role of the police in ‘round up’ operations which ensure people are taken forcibly to these institutions has been observed.⁴¹

50. The National Crime Records Bureau (NCRB) suggest that a total of 5203 inmates were reported as mentally ill out of a total of 419,623 inmates lodged in various jails in the country at the end of 2015, accounting for about 1.2 percent of the total number of inmates. Out of these, almost 50 percent are under trial.⁴² “As per law, a mentally challenged person can be tried by courts only if it is certified that he is fit to stand trial. Due to this, in most of the cases the mentally ill persons have to undergo imprisonment for many years. In some cases inmates suffering from mental ailments have remained in prison for 19 to 24 years.”⁴³

Recommendations

51. Recommendations for Article 14.
- a) There is a need for a shift in approach to voluntary community based care from institutional based care especially for people with psycho-social disability. The Government should develop programmes and allocate adequate resources for the effective implementation of community based care.
 - b) All laws that deprive liberty, as mentioned above, should be repealed/amended.

³⁹ Seher Counseling Center Progress Report 2008, Pune: Babu Trust for Research on Mind & Discourse; HRC No. 5978/SM-1242/2010 and connected cases, before Justice SR Nayak, in the Karnataka State Human Rights Commission, on 18th September 2010.

⁴⁰ Dyutimoy Mukherjee, (2008). ‘Laws For Beggars, Justice for Whom: A Critical Review of the Bombay Prevention of Begging Act 1959’ The International Journal of Human Rights, *Volume 12, Issue 2*, 279-288; UshaRamanathan, (2010), a constitution amid dire straits, Accessed online at http://www.india-seminar.com/2010/615/615_usha_ramanathan.htm on 15th November 2013.

⁴¹ Monitoring Report of Civil Society, Zero Draft, 2013, NCPEDP and IDA, Compiled and Edited by Bhargavi Davar, Babu Trust accessed at <http://www.dnis.org/>

⁴² Prison Statistics India 2015, Snapshots - 2015 accessed at http://ncrb.nic.in/StatPublications/PSI/Prison2015/Snapshots-2015_18.11.2016.pdf on 30th November, 2016.

⁴³ Shackled and lost, justice eludes mentally-ill undertrials, 18th October 2013, The New Indian Express, accessed at <http://www.newindianexpress.com/states/kerala/Shackled-and-lost-justice-eludes-mentally-ill-undertrials/2013/10/18/article1841422.ece> on 30th November, 2016.

Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment, Article 16: Freedom from exploitation, violence and abuse and Article 17: Protecting the integrity of the person

52. Articles 15, 16 and 17 have been taken together as they are somewhat similar to each other. The National Crime Records Bureau⁴⁴ maintains statistics regarding crime against women, children, senior citizens, and people belonging to the scheduled castes and scheduled tribes. However, it does not appear to have any statistics on the number crimes/abuses committed on disabled people.
53. As per media and NGO reports, there are a lot of instances which speak of neglect/abuse in institutions, where people with disabilities are not entitled to basic human dignities. The Human Rights Watch Report⁴⁵ gives the inside story of torture and inhuman behaviour meted out to mentally disabled people in institutions. In certain cases, they are also forced to share a bathroom with 73 others or stay nude till their clothes come back from being washed.”⁴⁶
54. There are hardly any support systems in the country which can provide the necessary information and support services for people with disabilities and their families. The Human Rights Watch found that there is a severe shortage of accessible and appropriate government services for women with psychosocial or intellectual disabilities and their families.⁴⁷
55. On a positive note, based on informal reports, it was found that wherever there are community based organisations, the instances of abuse or exploitation have been far fewer. Also, cases of abuses get reported to the NGOs and suitable actions are taken. Unfortunately, these are exceptions. Such systems ought to be prevalent nation-wide.

Recommendations

56. Recommendations for Articles 15,16 and 17.

⁴⁴ Crime in India, 2015 Statistics, The National Crime Records Bureau, accessed at <http://ncrb.gov.in/>.

⁴⁵ "Treated Worse than Animals"- Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India, December, 2013.

⁴⁶ "India treats its mentally disabled worse than animals", 3rd December, 2014, Manu Balachandran, accessed at <https://qz.com/306299/india-treats-its-mentally-disabled-worse-than-animals/> on 3rd February, 2017.

⁴⁷ "Treated Worse than Animals" Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India, Human Rights Watch, December, 2014, accessed at https://www.hrw.org/sites/default/files/reports/india_forUpload.pdf on 3rd February, 2017.

- a) The RPD Act 2016 has mandated several measures to be taken by the appropriate Government, as per Article 15 and 16 of the CRPD. These have to be effectively implemented.
- b) There is an urgent need to create community based support systems and structures across the country for people with disabilities and their families to provide need based support and information on all matters related to disability.
- c) Spread awareness amongst people with disabilities, their families, medical professionals, and so on regarding the right to integrity of people with disabilities.

Article 18: Liberty of movement and nationality

57. The Registration of Births and Deaths Act (RBD Act), 1969, provides a uniform law for the compulsory registration of births and deaths across the country. However, as per a news report in The Hindu, a national newspaper, 80-90% of disabled children don't have birth certificates.⁴⁸ The national average for birth registration is only 58 percent i.e. 42 percent of the total number of births are *not* registered in the country.⁴⁹
58. The Unique Identification Authority of India (UIDAI) was created with the objective of issuing Unique Identification numbers (UID), named as "Aadhaar", to all residents of India. Some people with disabilities and elderly people have difficulty in procuring this identification number due to the inaccessibility of the enrolment centres, the inaccessibility and user unfriendliness of the Aadhaar website⁵⁰ and lastly the lack of appropriate information on the website. (The FAQ page 'enrolling differently abled' is blank).⁵¹

Recommendations

59. Recommendations for Article 18.
 - a) A policy should be formulated for providing a home based service to ensure that people with disabilities and elderly people get the Unique Identification number. The website should be made compliant to WCAG 2.0 and the content should be made user friendly.

⁴⁸ 'Birth registration should be the first right of child', The Hindu, 19th April 2013 accessed at <http://www.thehindu.com/todays-paper/tp-national/birth-registration-should-be-the-first-right-of-child/article4632557.ece> on 28th September, 2016.

⁴⁹ UNICEF India Website

<http://unicef.in/Story/1133/Birth-Registration-the-picture-in-India> accessed on 28th September, 2016.

⁵⁰ "We tested 18 Government Apps, and Most are not Fully Accessible to the Disabled", The Centre for Internet & Society. The article was published in [Factor Daily](http://factor-daily.com) on August 31, 2016, can be accessed at <http://cis-india.org/accessibility/blog/factor-daily-august-31-2016-nirmita-narasimhan-we-tested-18-government-apps-most-are-not-fully-accessible-to-disabled>.

⁵¹ <https://uidai.gov.in/new/your-aadhaar/help/faqs.html#enrolment2>, Section FAQ - Unique Identification Authority of India Website accessed on 27th February, 2017.

Article 19: Living independently and being included in the community

60. For persons with disabilities who live with their parents/family, decisions are made by parents or family members in most cases. The person with disability continues to live in living conditions as provided to them by their family with little option or choice available for change. Without adequate support systems this often causes a tremendous burden on the family and violation of rights of persons with disabilities.⁵²
61. Living independently is difficult/impossible for many people with disabilities even if they would like to. It is also another fact that the number of people with disabilities who are living alone is increasing due to the breakdown of the joint family system and their migration to cities for employment. Support services for 'living independently' are almost nonexistent in the country. There are hardly any initiatives towards in-home, residential and other community support services. There are now a few services (run by the private sector) that have been initiated for elderly people in certain cities but these do not cater to specific needs of people with disabilities. Moreover, the costs are exorbitant and beyond reach for many disabled people. There are a few non government organisations (NGOs) which run Community Based Rehabilitation (CBR) programmes but their reach is very limited and approach is also sometimes medical based (barring some exceptions).
62. Karnataka, a State in India, has a Government run programme for appointing people with disabilities as Village Level Rehabilitation Workers (VRWs) and Multi Purpose Rehabilitation Workers (MRWs) for doing work at the grassroots level. This is a good concept which can be replicated across India. However, the jobs are contractual and even minimum wages are not paid to the workers. They are paid a meager honorarium. VRWs and MRWs have staged many protests for better job security.⁵³ There is an urgent need to create human resources in order to provide services at various levels. At the same time, for it to become sustainable and effective, it is important to give good trainings, a good salary, adequate job security and career advancement so that people with disabilities can see it as a viable profession.

⁵² Page 179, Monitoring Report of Civil Society, Zero Draft, 2013, NCPEDP and IDA, Compiled and Edited by Bhargavi Davar, Babu Trust accessed at <http://www.dnis.org/>

⁵³ Facebook post by Kannada Belaku-Physically Disabled Welfare Organization, dated 3rd March, 2016, accessed from <https://www.facebook.com/kanadabelaku/posts/944979298872999> on 8th March, 2017.

63. The National Trust has care-giving and group home schemes called ‘Sahayogi’ and ‘Gharaunda’ respectively for people with developmental disabilities, however, their reach is very limited as per the data given in the Annual Report (2014-15) of the National Trust.
- a) Under the Sahyogi Scheme, 2499 Caregivers have been trained and only 1052 have been deployed.⁵⁴
 - b) Gharaunda (which is a Group Home Scheme) is present only in 8 places.⁵⁵

Recommendations

64. Recommendations for Article 19.
- a) A nationwide programme for living independently and in the community should be introduced.
 - b) MRWs and VRWs should be inducted in all States and UTs of the country. They should be trained well to provide any support that may be required. They have to be paid well and have job security as any Government employee does.
 - c) The National Trust should strengthen its schemes for providing personal assistance and setting up group homes to ensure better reach.

Article 20: Personal mobility

65. There is a scheme for distributing aids and appliances called ‘Assistance to Disabled Persons for Purchase/Fitting of Aids/Appliances’ (ADIP). However, the quality of these aids and appliances is a major cause for concern. As per the Planning Commission's Report on the ADIP Scheme, out of those who have received assistance under the Scheme, only INR 4331 (USD 66.7) has been spent on each person with disability for providing the appropriate aid. Some States like Gujarat, Uttrakhand and Jharkhand had spent only INR 2000 (USD 30.8) or less per beneficiary which is much less than the amount mentioned in the guidelines in ADIP. Looking at the amount spent, it is obvious that the quality of the appliance given would have been very low. Surveys have revealed that the appliance breaks down within six months to an year after being provided and as no maintenance cost is provided, they become non functional . Further, the report states that 84.7 percent of the beneficiaries of Odisha State are

⁵⁴ Page 17, Annual Report 2014-15, The National Trust.

⁵⁵ Page 14, Annual Report 2014-15, The National Trust.

dissatisfied followed by Bihar (80.9 percent). There is also a huge disability imbalance among the beneficiaries. The majority (70 percent) are people with locomotor disabilities.⁵⁶

66. Another concern is that most aids and appliances distributed by the Government and NGOs in camps etc. are largely abandoned. This is because they are mostly unsuitable. There is no system to assess the need of the individual and suitably customise the device. There are hardly any professionals who are trained to do the assessments nor are there training programmes for professionals to learn the assessments required for providing suitable assistive devices in the country.
67. The 'Sahyogi Scheme' was initiated by The National Trust (under the National Trust Act, 1999) to provide personal assistance to people with high support needs. As per the Annual Report (2014-15), only 2499 Caregivers were trained of which 1052 have been deployed till now.⁵⁷ The number of caregivers is extremely low compared to the need.

Recommendations

68. Recommendations for Article 20.
 - a) A Centre of Excellence for assistive devices needs to be established where the latest aids and assistive devices are not only displayed/ listed but where appropriate services are also provided to people to enable them to choose the most appropriate device based on their needs and situation/environment. It should have branches all over the country including districts and villages. Courses should be introduced for training assistive technology specialists who should then be able to provide appropriate services to people with different disabilities.
 - b) The Government should not only revise the ADIP scheme but also strengthen its implementation to ensure that a proper assessment is made, better quality aids are provided and appropriate customisation of aids, in order to suit the specific needs of any person with disability seeking help, is ensured.
 - c) There should be a better personal assistance scheme to make it attractive for people to become personal assistants and at the same time ensure that this service is made available to people with disabilities at an affordable price (by granting suitable subsidies, allowances, etc.).

⁵⁶ Evaluation Study on the Scheme of Assistance to Differently Abled Persons for Purchase/Fitting of Aids/Appliances (ADIP), Planning Commission Programme Evaluation Organisation, Government of India, New Delhi, December 2013, http://planningcommission.gov.in/reports/peoreport/peo/eva_adip1501.pdf, accessed on 20th October, 2016.

⁵⁷ Page 17, Sahayogi, National Trust, Annual Report, 2014-15, <http://www.thenationaltrust.gov.in/upload/uploadfiles/files/annualreport2015english.pdf> accessed on 21st October, 2016.

Article 21: Freedom of expression and opinion, and access to information

69. Disability groups have been demanding that Sign Language be made an official language but there has been no initiative taken as yet from the Government in this regard. However, one positive development is that, after a lot of advocacy, the Indian Institute of Sign Language has been recently set up.⁵⁸
70. As mentioned in the paragraph 144 of the First Country Report, 2015, a National Resource Centre for Augmentative and Alternative Communication was set up in 2011 to promote augmentative and alternative communication through training and research. This is a positive development but information regarding its reach and impact could not be found in the Report or on the website.
71. The Right to Information (RTI) Act, 2005, Clause 7(4), states that the Public Information Officer or State Public Information Officer shall reply/assist/provide information in an accessible format to a person with disability. This is a positive aspect. However, there is no data available indicating as to how many people with print disabilities received their replies in accessible formats.
72. Visual Media remains inaccessible to people with sensory disabilities. As a result of advocacy by the disability sector, the Ministry of Information and Broadcasting issued a Circular in 2015 regarding captioning and audio description of television news/programmes. However, there has been no progress made (as of February 2017). As per the views of disability activists, it will take time as far as actual implementation is concerned. According to them, the Ministry has completely overlooked the critical issue of sign language interpretation. They want the Government to mandate at least one news bulletin at prime time every day, with sign language interpretation, to begin with. The Accessible India campaign launched by the Government in 2015, has media accessibility as part of its agenda. However, though more than a year has elapsed since its launch, we see that no/very little progress has been made.
73. There is a deficiency of books and other reading materials in accessible formats. Less than 1 percent of the population of visually impaired people have adequate access to printed matter and only around 0.5 percent of all the published books in India get converted into accessible

⁵⁸ Order No. 4-12/2009/NI, Ministry of Social Justice and Empowerment, 28th September 2015, [accessed from http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/1\(1\).pdf](http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/1(1).pdf) on 15th January, 2017.

formats.⁵⁹ Therefore, the Copyright (Amendment) Act, 2012 is definitely a welcome step in this regard. However, for books to become to become accessible, they have to be published in accessible formats. There is very little being done in this regard.

Recommendations

74. Recommendations for Article 21.
 - a) Establish the National Captioning Centre as soon as possible. This has long been pending. The decision to establish it was taken in the XI Five Year Plan (2007-12).
 - b) Create forums, like youth clubs, self help groups, in rural and urban areas for disabled people to express their opinion freely.
 - c) Expand the services of the National Resource Centre for Augmentative and Alternative Communication systematically to other States, districts and villages.

Article 22: Respect for privacy

75. Respect to privacy has not been explicitly mentioned in The RPD Act, 2016. There is a mention of it in the section regarding legal capacity, where it states that “any person providing support to the person with disability shall not exercise undue influence and shall respect his or her autonomy, dignity and privacy.” There is a provision in the Act for establishments to keep a record of the employees with disabilities. It is not stated anywhere that the data should be kept confidential.
76. Many NGOs take an indepth case history of individuals, including information regarding their family, marital relationships, and so on. However, most NGOs do not have a data protection policy. The collected information is shared with employers, educators and so on without taking appropriate permissions.

Recommendations

77. Recommendations for Article 22.
 - a) The process of declaring the nature of one's disability in various documents at the concerned offices should be streamlined so as to protect an individuals' privacy as much as possible. A suitable code of ethics should be formulated in this regard.
 - b) The training curriculum for rehabilitation and medical professionals should include the right to privacy of disabled persons in it.

⁵⁹ Guest Post: A Step Forward and a Step Back for the Print Disabled, [Swaraj Paul Barooah](https://spicyip.com/2012/12/guest-post-step-forward-and-step-back.html), 14th December, 2012 accessed at <https://spicyip.com/2012/12/guest-post-step-forward-and-step-back.html> on 14th November 2016.

- c) The existing laws which govern the right to privacy directly and indirectly should be modified so as to explicitly include people with disabilities.

Article 23: Respect for home and the family

78. The marriage/divorce laws allow Leprosy and mental illness as grounds to annul a marriage or seek a divorce.⁶⁰ Under the Hindu Adoption and Maintenance Act, 1956, any person with Leprosy or unsound mind cannot adopt a child. The term 'unsound mind' is very often arbitrarily interpreted to discriminate against people with psycho-social impairments even though they may have the capacity for child rearing.⁶¹
79. People with disabilities face hurdles in adopting children. “The law speaks about the ‘welfare of the child’ and the interpretation by the administrators is that the welfare of the child would not be served if there is a disabled person adopting. I know at least two recent cases where one of the disabled parents is visually challenged. They were first discouraged by adoption agencies and then when force and influence was used, relented.”⁶²
80. The judgment of the Supreme Court (2009)⁶³ which upheld the right to motherhood for a person with intellectual impairment and which obligated the State to provide necessary support to the woman for bringing up the child, was definitely a step forward in this regard.
81. ‘An Analysis of Specific Expenditure Related to Persons with Disabilities’ report states that INR 216.9 million(USD 3.3 million) in 2014-15 and 111.6 million (USD 1.7 million) in 2015-16, respectively were disbursed as marriage allowances for disabled people by States and UTs across India. A marriage allowance is a positive aspect if it is given to a person with disability for setting up her/his home and family. However, in certain States, the allowance is given to a non disabled person for marrying a disabled person, thus continuing to propagate the age old, demeaning, charity/dowry system.⁶⁴

⁶⁰ Special Marriage Act, 1954, Dissolution of Muslim Marriage Act, 1939, Hindu Marriage Act, 1955, Hindu Adoption and Maintenance Act, 1956, Indian Divorce Act, 1869, etc. sourced from Indian Kanoon (a search engine for Indian Laws and Acts).

⁶¹ The Hindu Adoptions and Maintenance Act, 1956, accessed from <http://tcw.nic.in/Acts/Hindu%20adoption%20and%20Maintenance%20Act.pdf> on 12th November, 2016.

⁶² <http://www.sexualityanddisability.org/having-children/adopting-a-child/> as told by Ms. Kanchan Pannani, disability Activist & Lawyer, accessed on 6th March, 2017.

⁶³ Suchita Srivastava & Anr vs Chandigarh Administration on 28 August, 2009, accessed from <http://indiankanoon.org/doc/1500783/> on 6th March, 2017.

⁶⁴ ‘An Analysis of Specific Expenditure Related to Persons with Disabilities’ by the Centre for Promotion of Social Justice-Equals 2016.

82. The abandonment of disabled children is a pressing issue that has not been adequately addressed by the Government. Over 60,000 children are abandoned each year in India.⁶⁵ It is a fact that many children are abandoned due to disabilities and there is no official count as to how many disabled children are abandoned yearly. As per the Parallel Report submitted by the National Disability Network (NDN) to the Committee on the Rights of the Child (CRC), its views on India's chapter of DPI are, "It is a matter of grave concern that specific recognition of high levels of abandonment has not resulted in either a detailed official study, policy directions or indeed strategies to secure the child within their family and communities so that children with disabilities can exercise their right to stay and be cared for within their family."⁶⁶

Recommendations

83. Recommendations for Article 23.
- a) The State must create adequate financial, medical and community based support for families with disabled people (both adults and children), so that under no circumstances are they abandoned by their families.

Article 24: Education

84. Population Census 2011 showed that:
- a) Among the total number of disabled persons in the country, 45 percent are illiterates.
 - b) Only 13 percent of the disabled population has matriculation/ secondary education.
 - c) Only 5 percent are graduates and above.
 - d) Among male disabled persons, 38 percent are illiterate.
 - e) Among female disabled persons, 55 percent are illiterate.
 - f) In urban areas, 67 percent of the total number of disabled persons are literate vis-a-vis 49 percent in rural areas.⁶⁷
85. As per the Eighth All India School Education Survey (8th AISES), with reference date 30th September 2009 and published in 2014,⁶⁸

⁶⁵ Over 60,000 Children Abandoned Each Year in India: Report, February 4, 2013, accessed from <http://www.ibtimes.co.in/over-60000-children-abandoned-each-year-in-india-report-431148> on 6th March, 2017.

⁶⁶ Page 15, DPI-India's parallel report to the Committee on the Rights of the Child (CRC), accessed at <http://www.disabledpeoplesinternational.org/DPI-India-parallel-report-to-CRC> on 7th March, 2017

⁶⁷ Disabled Persons in India, A Statistical Profile 2016, accessed from http://www.mospi.gov.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf on 9th March 2017

⁶⁸ Note: Decimals have been rounded off for easy reading

- a) Out of all the schools in the country, only 21 percent adhere to inclusive education for disabled children.
 - b) Out of those schools that adhere to inclusive education, the proportion of primary, upper primary, secondary and higher secondary schools are 60 percent, 28 percent, 7 percent and 5 percent, respectively.
 - c) The number of teachers who have received training of at least two weeks in inclusive education is only 1 percent out of the total number of teachers.
 - d) Out of the total number of schools in the country, 10 percent have Handrails, 44 percent have ramps, 4 percent have an adapted laboratory and 8 percent have an adapted lavatory.
 - e) Out of the total number of schools, Braille books are available in only 7 percent.
 - f) Over the period of time from 2002 to 2009, the number of students having hearing, orthopaedic and intellectual impairment have decreased by 4 percent, 68 percent and 16 percent respectively. However there was an increase of 17 percent of visually impaired students in the country.
86. A study carried out by AARTH-ASTHA revealed that the enrolment of children with disabilities, in relation to all children in the Government schools, continues to be less than one per cent over a span of a decade (2004/05-2011/12).⁶⁹
87. As per the SSA programme there are resource teachers appointed at the gram panchayat level. They have to cater to at least 18 schools and hence are unable to cater to the needs of specific children in an effective way. The resource teachers are now demanding a better deal and are demanding that one resource teacher be appointed for every school.⁷⁰
88. In another survey conducted by SRI-IMRB in 2009 revealed that 34 percent of children with disabilities in India, in the age group 6 to 14 years, are out of school. The percentages are even higher among children with intellectual disabilities (48 percent), speech impairments (36 percent) and multiple disabilities (59 percent) (SRI-IMRB Survey, 2009).⁷¹
89. Based on all the data presented above, it is clear that most schools do not cater to children with disabilities in spite of the SSA (Education for All Campaign) being around for decades

⁶⁹ The Third Annual Report on Status of Children with Disabilities under Right to Education Act (2012-2013) by AARTH-ASTHA, Sparc India, Aaina.

⁷⁰ Resource teachers seek a better deal, The Times of India, Kochi, Feb 11, 2016, accessed from <http://timesofindia.indiatimes.com/city/kochi/Resource-teachers-seek-a-better-deal/articleshow/50942308.cms> on 11th March, 2017.

⁷¹ Page 76-77 Fixing the Broken Promise of Education for All: Findings from the Global Initiative on Out-of-School Children, UNESCO and UNICEF, 2015.

now. Almost all teachers are untrained on inclusive education. What is worse is that enrollment of children with disabilities have actually reduced over the years! There seems to have been little/no action taken to address the issue. That the highest number of out of school children are those with intellectual impairment indicates that India's education system is still IQ driven. The focus is very much on the limitations of people with disabilities rather than on their potential. In such a one size fits all approach, people with intellectual or mental disabilities simply cannot find their rightful place.

90. The Report submitted by Equals in 2016, 'An Analysis of Specific Expenditure related to People with Disability Report' states that INR 1665.8 million (USD 25.7 million) in 2013-14, INR 2143.4 million(USD 33.0 million) in 2014-15 and INR 2479.3 million (USD 38.2 million) in 2015-16, were disbursed to special schools.⁷² There are hardly any surveys /studies on the functioning and the impact of these special schools. Further, these special schools do not even fall under the Ministry of Human Resource Development (MHRD) in charge of education but under the Ministry of Social Justice and Empowerment (MSJE).
91. The University Grants Commission (UGC) initiated a Scheme in 2008, called the Higher Education for Persons with Special Needs (HEPSN). It has three components, namely, 1) the establishment of enabling units, 2) providing accessibility and 3) providing special equipment to augment educational services for students with disabilities. However, in the Annual Reports of the UGC for the years 2013-14 and 2014-15, no mention has been made regarding the number of universities which have been given grants under the scheme. The First Country Report, 2015 (paragraph 170) has also mentioned this Scheme but no data has been given. Based on newspaper reports, it is seen that Disability Offices have been set up in very few universities.⁷³
92. MHRD has a Scheme, "Vocationalisation of Secondary and Higher Secondary Education" which seeks to enhance the employability of youth by offering demand driven, competency based, modular vocational courses and further, to maintain the competitiveness of the students who went through these courses, provisions were made that provided multi-entry and multi-exit learning opportunities and vertical mobility/ interchange ability in qualifications. These courses were also created specifically to fill the gap between a student's

⁷² An Analysis of Specific Expenditure Related to Persons with Disabilities - Equals, 2016.

⁷³ Fall in enrolment of differently-abled students in higher education: survey, The Hindu, 5th April, 2015, accessed from <http://www.thehindu.com/news/cities/Delhi/fall-in-enrolment-of-differentlyabled-students-in-higher-education-survey/article7069631.ece>, on 29th November, 2015.

education and her/his employability and to reduce the dropout rate at the secondary level and finally to decrease the pressure on institutions of higher education. This vocational education is therefore introduced from the IX class onwards. So far this scheme has been offered in 2035 Government schools in 24 States/UTs and covers 9 sectors including the automotive industry, retail industry, security, IT/ITeS, healthcare industry, agriculture, travel & tourism, physical education & sports and finally the beauty & wellness industry. Again, no data has been given in the Annual Reports of the HRD Ministry as to how many students with disabilities enrolled in the above vocational courses nor is there information of whether these courses have been made inclusive (curriculum/training materials, assessment, etc.). Many students with disabilities who drop out at Class VI or before, due to the inflexibility of curriculum or other reasons, may not have the scope to get vocational education in Government schools. In general there seems to be no/very few options available for them to pursue pre-vocational and vocational education except in a few special schools which are run by NGOs and hence do not fall under the MHRD.

Recommendations

93. Recommendations for Article 24.
 - a) “Special Education”/“Special Schools” which comes under the MSJE should be transferred to the MHRD.
 - b) The disability component should be well integrated into the curriculum of the bachelor’s/master’s degree/ diploma/certificate courses in education so that all teachers are aware and have the capacity to teach children with disability.
 - c) Compulsory training should be imparted to all existing teachers in the area of inclusive education.
 - d) Concerted work should be undertaken by the MHRD for providing flexible curricula and modifying such curricula to suit children with different abilities right from the primary level till the vocational level.

Article 25: Health

94. All the flagship health policies/programmes of the Government of India, for example the National Rural Health Mission (NRHM), the National Urban Health Mission (NUHM), the Integrated Child Development Scheme, Janani Suraksha Yojana, Janani Shishu Suraksha Karyakaram etc., do not mention access to services for people with disabilities. As per the Study, ‘Access to health care and employment status of people with disabilities in South

India', people with disabilities encounter a range of barriers in accessing health care facilities including lack of information and physical barriers, inadequate personal assistance, affordability, limitations of resources and inaccessible infrastructure and non-friendly environments."⁷⁴

95. There is huge dearth of health professionals who understand disability. As per the findings of a study conducted on the Right to Health of People with Disabilities in India, it was found that there was a serious lack of trained medical personnel who can offer people with disabilities timely and effective medical attention.⁷⁵ Another study indicated a huge gap in the expectations of people with disabilities and the actual provision of services.⁷⁶ Standard medical courses, such as MBBS and so on, do not have disability in their curricula. Physical Medicine and Rehabilitation (PMR), which is a Masters level course that explicitly covers disability, is available in very few medical colleges in India.
96. With regard to health services for women with disabilities, a survey explicitly states that, "the availability of health care especially (with regard to) reproductive health, has been almost non-existent." The survey further mentioned that women with disabilities did not get information or assistance about their health issues especially about fertility and reproductive health concerns.⁷⁷
97. In 2015, the Government of India launched a scheme called Swavlamban Health Insurance Scheme with the objective of providing affordable Health Insurance to people with disabilities. The scheme has been designed to provide comprehensive cover to the beneficiary as well as to her/his family with a single premium across a wide age band and can be availed by persons with disabilities aged between 18 years and 65 years with a family annual income of less than INR 300,000 per annum. The scheme also ensures the coverage of any pre-existing condition and a health Insurance cover up to INR 200,000 per annum as family floater.⁷⁸ This is a very positive development. Regarding other insurance schemes, it may be

⁷⁴ Gudlavalleti et al., Access to health care and employment status of people with disabilities in South India, the SIDE (South India Disability Evidence) Study, BMC Public Health 2014, accessed from <https://bmcpublihealth.biomedcentral.com/articles/10.1186/1471-2458-14-1125> on 15th November, 2016.

⁷⁵ The Right to Health of Persons with Disabilities in India, Access and Non-Discrimination in Health Care for Persons with Disabilities, Jayana Kothari, Centre for Law and Policy Research, July, 2014.

⁷⁶ Gudlavalleti et al., Access to health care and employment status of people with disabilities in South India, the SIDE (South India Disability Evidence) Study, BMC Public Health 2014, accessed from <https://bmcpublihealth.biomedcentral.com/articles/10.1186/1471-2458-14-1125> on 15th November, 2016.

⁷⁷ The Right to Health of Persons with Disabilities in India, Access and Non-Discrimination in Health Care for Persons with Disabilities, Jayana Kothari, Centre for Law and Policy Research, July, 2014.

⁷⁸ [The New India Assurance Co. Ltd., Swavlamban, accessed from http://www.newindia.co.in/Content.aspx?pageid=6363](http://www.newindia.co.in/Content.aspx?pageid=6363) on 19th November, 2016.

necessary for the Government to have a policy for ensuring non discrimination so that people with disabilities are not arbitrarily denied insurance or need to have to pay exorbitant premiums.

Recommendations

98. Recommendations for Article 25.
 - a) There should be explicit provisions for access to health services for people with disabilities in all flagship programmes like NRHM, NUHM, etc.
 - b) Introduce disability as part of the core curricula in all MBBS and other medical and para medical courses. The content should not be limited to the medical aspects of cure/treatment of impairment but should cover rehabilitation, counselling, support and rights of the individual.

Article 26: Habilitation and rehabilitation

99. There are hardly any habilitation/rehabilitation services available in the country. Only about 5 to 10 percent of people with disabilities have access to basic rehabilitation services.⁷⁹
100. As per paragraph 199 of the First Country Report, 2015, the District Disability Rehabilitation Centres (DDRC) are present in 251 Districts. It only covers 39 percent of a total of 640 Districts⁸⁰ in the country. Their style of functioning too has been a major issue as per several media reports. Many do not have the necessary human resources to provide adequate services.⁸¹ There are no nation-wide system / infrastructure of the Government for providing rehabilitation service at the village level!
101. There are only about 693 non governmental organisations that receive funds under the Deendayal Disabled Rehabilitation Scheme (DDRS). Overall, on an average, about 150,000 people with disabilities per year are beneficiaries from the above Scheme. As per the data,

⁷⁹ Occupational Therapy in Community Based Rehabilitation, Satish Mishra, Mobility India, Bangalore, The Indian Journal of Occupational Therapy : Vol. XXXV: No. 1, accessed at <http://medind.nic.in/iba/t03/i1/ibat03i1p13.pdf> on 1st February 2017.

⁸⁰ District Census 2011, accessed from <http://www.census2011.co.in/district.php> on 1st February, 2017.

⁸¹ Fund crunch hampers functioning of DDRC, The New Indian Express, 10th October 2013, <http://www.newindianexpress.com/states/kerala/Fund-crunch-hampers-functioning-of-DDRC/2013/10/10/article1827066.ece> accessed on 9th December 2016.

as many as eight States and UTs (i.e. 22 percent of the total) have had zero beneficiaries in the Year 2014-15.⁸²

102. A recent study conducted with responses from persons with disabilities showed that most people with disabilities, especially those with disabilities like Multiple Sclerosis, Down's Syndrome, Cerebral Palsy had never received early intervention care.⁸³
103. The focus of mental health programmes, like the National and District Mental Health Programmes, largely focus on medical intervention. There are hardly any programmes/schemes of the Government for rehabilitation of people with psychosocial impairment.
104. As per the data in the Annual Report of the Rehabilitation Council of India of 2013-14, cumulatively, 35,447 Professionals and 55,106 Personnel, totalling to 90,553 have been registered in the Central Rehabilitation Register as on March 31, 2014. This number, of professionals/personnel, is extremely low compared to what is needed.⁸⁴

Recommendations

105. Recommendations for Article 26.
 - a) There is an urgent need to ensure that rehabilitation services are made available in all the States and Districts of India. The Government should also develop a mechanism to set up services at the village/community level. Home-based services have to be made available too.
 - b) Review and revamp the rehabilitation courses available in the country and make it relevant to the present needs and make it attractive for the students to opt for it.

Article 27: Work and employment

106. According to Population Census, 2011, in the 15 to 59 age group, only 37 percent of people with disability have employment. Among the working population with disability, 78 percent

⁸² Annexure 10, Page 232-233, Annual Report 2015-16, Department of Empowerment of Persons with Disabilities, accessed at http://www.disabilityaffairs.gov.in/upload/57301ed5a347fDisabilities_AR_2015-16_%20English.pdf on 7th September, 2016.

⁸³ 'The right to health of persons with disabilities in India'. The Centre for Law and Policy Research, Jayna Kothari, 2012, Prepared for HRLN, IAMD and NAAJMI, New Delhi.

⁸⁴ Page 38, Central Rehabilitation Register, 27th Annual Report 2013-14, Rehabilitation Council of India, accessed from <http://www.rehabcouncil.nic.in/writereaddata/RCI-Annual%20report%202013-14%20English.pdf> on 2nd February, 2017.

are males.⁸⁵ Among the employed people with disabilities (main and marginal workers), the percentage of persons with multiple disabilities, intellectual disability and psychosocial disability are 19 percent, 18 percent and 15 percent respectively.⁸⁶

107. The RPD Act 2016 provides for four percent reservation in Government and public sector jobs for persons with benchmark disabilities. The earlier Act had reservation only for three categories of disabilities (locomotor, visual and hearing disability). However, in the Act of 2016, reservations have been extended to people with Cerebral Palsy, Leprosy cured, Dwarfism, acid attack victims, Muscular Dystrophy, Autism, intellectual disability, specific learning disability, mental illness and multiple disabilities including deaf-blindness. The new Act also mandates that the private sector formulate equal opportunity policies and to maintain data on employees with disabilities. It also has strong clauses on non discrimination and accessibility which are applicable to the private sector as well.
108. There are hardly any policies/schemes that explicitly include people with developmental disabilities in the employment and poverty alleviation programmes of the country. The only scheme, which is mentioned in the First Country Report, 2015, is ‘Uddyam Prabha’ which provides an interest incentive for self employment. Interestingly, this scheme is not mentioned at all in the Annual Report (2015-16) of the Department of Empowerment of Persons with Disability.
109. In the First Country Report, 2015, it is mentioned that the reservation provided in The Disability Act, 1995 does not prevent a person with disability from acquiring a position through open competition (paragraph 212). This is simply not true. There have been many instances where people with disabilities have been denied/offered low ranking jobs stating that the higher position for which they were qualified has not been “identified” suitable for persons with disabilities. For example a person with disability had cleared the Civil Services Examination in 2010 and was eligible for the Indian Revenue Service, based on her rank in the Civil Services Examination and interview. However, she was not allotted the service based on the medical board’s report which stated that she does not satisfy the physical

⁸⁵ Table C 23, Disabled Population Among Main Workers, Marginal Workers and Non Workers by the Type of Disability, Age and Sex, Population Census 2011 accessed at http://www.censusindia.gov.in/2011census/population_enumeration.html on 26th November 2015.

⁸⁶ Distribution of disabled workers by sex, economic status and residence – 2011, Population Census, accessed at http://www.censusindia.gov.in/2011census/population_enumeration.html on 26th November 2015].

requirements of the job which includes pulling/pushing and lifting.⁸⁷ She then filed a case in the Central Administrative Tribunal, which ruled in her favour in 2014.⁸⁸ However, not everyone can approach the court. Hence, the clause related to identified jobs needs to be reviewed to make it non discriminating.

110. As per the data of the Ministry of Labour and Employment, there has been a consistent increase in the number of persons with disabilities on the Live Register from 565,900 in 2004 to 717,200 in 2013 but the number of placements of people with disabilities by the Employment Exchanges has been steadily declining over the years. It was 4200 in 1999, 3700 in 2008, only 2100 in 2012 and just 1871 in 2013.⁸⁹ Correspondingly, the total number of placements of non disabled people by the Exchanges has increased for the same period, from 177,700 in 2000 to 304,900 in 2008 and to 427,600 in 2012.⁹⁰ There has been no measures taken to improve the functioning of these employment exchanges with regard to the placement of people with disabilities.
111. Globally, it is seen that 80 percent of people with disabilities live in poverty.⁹¹ There are hardly any measures to improve the lives of people with disabilities living in poverty. In Annexure 8 of the First Country Report, 2015, four schemes have been listed. However, there is no data given regarding the number of beneficiaries with disabilities under the poverty alleviating/livelihood schemes. Some information from the Annual Reports are given below.
- a) Swarnjayanti Gram Swarozgar Yojana (SGSY) and Sampoorna Grameen Rozgar Yojana (SGRY) together have been restructured as the National Rural Livelihood Mission (NRLM) in 2011 and subsequently renamed as Aajeevika.⁹² There is no data in the Annual Reports of the Ministry of Rural Development, 2012-13 and 2013-2014, regarding persons with disabilities covered under the NRLM/Aajeevika Scheme.
 - b) Swarna Jayanti Shahari Yojana (SJSRY): This Scheme has been restructured as the National Urban Livelihoods Mission (NULM) since September, 2013. As per the Annual Report of the Ministry of Housing and Urban Poverty Alleviation, during 2014-15,

⁸⁷ Ms. Ira Singhal vs Department Of Personnel And, 25 February, 2014, Central Administrative Tribunal – Delhi, accessed at <http://indiankanoon.org/doc/106268390/>, on 25th November 2015.

⁸⁸ How IAS topper Ira Singhal took up the challenge of lifting 10 kg of weight in one hand; Babus of India, 6th July 2015, accessed at <http://www.babusofindia.com/2015/07/cat-case-how-ias-topper-ira-singhal.html> on 25th November 2015.]

⁸⁹ Page 44, Performance of Employment/Special Employment Exchanges for Physically Handicapped 1999-2008; Employment Exchange Statistics, 2010, Ministry of Labour and Employment and Annual Reports of Ministry of Labour and Employment till 2012-13.

⁹⁰ Page 27, Employment Exchange Statistics- All India - All Categories – 2000-09; Employment Exchange Statistics, 2010, Ministry of labour & Employment and Annual Reports of Ministry of Labour and Employment till 2012-13 .

⁹¹ Paragraph 23, Transforming our world: the 2030 Agenda for Sustainable Development, <https://sustainabledevelopment.un.org/post2015/transformingourworld> accessed on 25th November 2015.

⁹² Page 24, Annual Report 2012-2013, Ministry of Rural Development.

among those who enrolled for the Self Employment Programme (SEP) and Employment though Skills Training and Placement Programme (EST&P), which are components of the NULM, only 0.83 percent and 0.58 percent respectively were persons with disabilities.⁹³

- c) The Prime Minister's Employment Generation Programme (PMEGP) was launched in 2008. The website states that in 2014–15, 18,141 projects were financed and 138,728 employment opportunities were created. The data for persons with disabilities is not given.⁹⁴
- d) Under the Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) programme, from 2004-05 till 30th November, 2014, a total of 1.094 million candidates have been trained and 851,000 candidates have been given placement. The Annual Report of the Ministry of Rural Development (2014-15) has the data for social groups such as SC, ST, women, minorities, but not for people with disability.

112. One of the very important legislations enacted in 2005 was the Mahatma Gandhi National Rural Employment Guarantee Act (NREGA). As per the Operational Guidelines, 2008, “If a rural disabled person applies for work, work suitable to his/her ability and qualification will have to be given. This may also be in the form of services that are identified as integral to the programme.” This is a positive aspect. However, its implementation is weak. As per the data available on the website, the total number of people employed under NREGA, only 0.63 percent were people with disabilities in the year 2015-16.⁹⁵ There is no other relevant data either on the number of people with disabilities who registered for employment, the average person days worked, the gender/disability break up, and so on. Though NREGA data claims that people with disability are being provided employment opportunities, but in reality it may not be happening. A Study conducted by the All India Confederation of the Blind (AICB) had revealed that the majority of the “blind people” who got employment under the NREGA were not actually blind! In Punjab, of the 602 “blind persons” who had secured work under NREGA, the Study found none of them to be visually impaired. Similarly, in the Putter block

⁹³ Page 14, Annual Report 2014-2015, The Ministry of Housing and Urban Poverty Alleviation http://mhupa.gov.in/writereaddata/Annual_Report_2014_15_MHUPA_English.pdf accessed on 25th November 2015.

⁹⁴ Home Page, Website of Prime Minister's Employment Generation Programme <http://www.kviconline.gov.in/pmegp/pmegpweb/> accessed on 25th November 2015.

⁹⁵ Website of NREGA, http://mnregaweb4.nic.in/netnrega/all_lv1_details_dashboard_new.aspx, accessed on 3rd March, 2017.

of Karnataka, 43 persons reported to be “blind” as per official information, were found to be fully sighted.⁹⁶

113. The Employment and Unemployment Surveys of the National Sample Survey (NSS) are primary sources of data on various indicators of the labour force at National and State levels. These surveys are conducted regularly to assess the employment-unemployment level across the country. In fact there is an inherent assumption in the questionnaire that people with disabilities are incapable of working. The only reference to disability that can be found on the questionnaire is under the ‘out of the labour force’ classification, where disability is cited as one of the reasons for being out of the labour force.⁹⁷

Recommendations

114. Recommendations for Article 27.
- a) An audit should be conducted of all employment and poverty alleviation schemes to ensure the inclusion of people with disabilities.
 - b) As most people with disabilities live in rural areas and the Ministry of Rural Development is focused on poverty alleviation and livelihood, a Disability Cell should be established within the Ministry for effectively including people with disabilities in all the programmes.
 - c) The Ministry of Statistics and Programme Implementation should include persons with disability as a social group in the annual Employment and Unemployment National Sample Survey.

Article 28: Adequate standard of living and social protection

115. In the First Country Report, 2015, paragraph 244, it is mentioned that “under NSAP—the Indira Gandhi National Disability Pension Scheme (IGNDPS) has been increased from 3 to 6 US Dollars per month and upper age limit has been increased from 59 to 79 years in 2012.” There seems to be an error in the Report. As per the information on the website, it has not been doubled. It was increased from INR 200 to INR 300, which is less than 4 US Dollars.⁹⁸ Moreover, even if the amount is doubled, it is not even enough to cover the cost of food for a

⁹⁶ DNIS. Vol 9. Issue 11, August 15, 2012, accessed at

http://dnis.org/news.php?issue_id=11&volume_id=9&news_id=1300&i=7 on 25th November 2015.

⁹⁷ Key Indicators of Employment Unemployment Survey in India 2011-12, NSS 68th Round, http://mospi.nic.in/Mospi_New/upload/KI-68th-E&U-PDF.pdf accessed on 25th November 2015.

⁹⁸ Office Memorandum, Guidelines for Central Assistance Under the IGNDPS Scheme, Government of India, 8th November 2012 <http://nsap.nic.in/Guidelines/dps.pdf>.

month let alone the disability cost. The number of beneficiaries covered under this scheme during 2012-13 was 743,806. This is only 3.3 percent of the total disabled population (Census 2011).

116. There is a flagship campaign for building public toilets across India. However, there is no focus on building them disabled friendly. For instance, in Bengaluru, hundreds of hi-tech toilets (e-toilets) have been installed with sensors etc. However, they are not disabled-friendly nor do they follow universal design principles.⁹⁹
117. Similarly, 'Water ATM', safe drinking water vending machines, is making its presence felt across the country. However, the design of the Water ATMs is not disabled-friendly. Users with disabilities are not being considered when water and sanitation programmes are being planned and implemented.

Recommendations

118. Recommendations for Article 28.
 - a) There should be no age limit for social protection schemes. The pension amount should be revised to cover the food and other relevant aspects including the disability cost. There should be greater awareness created and a campaign to improve the coverage of people under the schemes must be launched.
 - b) The concept of universal design should be mandatorily followed in the water and sanitation schemes. There should be a mechanism to include accessibility at the design and procurement stage itself.

Article 29: Participation in political and public life

119. Article 326, in the Constitution of India, 1949 and the Representation of Peoples' Act, 1951, cite "unsoundness of mind" as a ground to debar and disqualify candidates from any indirect and direct political participation. This term appears to be open to arbitrary interpretations. There also seems to be no set guidelines for its usage. There are laws, such as Tamil Nadu Panchayats Act, 1994 and Orissa Municipal Act, 1950, that disqualify persons affected with Leprosy and those who are "deaf-mute" from holding civic offices. The Rights of Persons with Disabilities Act, 2016 also does not specifically mention the right and opportunity for persons with disabilities to vote and to be elected. It only mentions accessibility to voting.

⁹⁹ DNA , 5th August 2014, <http://www.dnaindia.com/bangalore/report-bangalore-gets-hi-tech-toilets-2008160>

120. Over the years, the Election Commission has taken some steps to address the needs of disabled voters, based on the Supreme Court's Order for making voting accessible for people with disabilities.¹⁰⁰ However, the facilities provided are just the bare minimum. No election literature, including party manifestos, are available in accessible formats. The Election Commission of India website is also not accessible to people with disabilities.¹⁰¹
121. There are no provisions for sign language interpreters to be present during election campaigns by any party. There are no alternative methods for voting available for people who are unable to reach the voting booth due to their disability. To compound the problem, there is also a lack of awareness among people with disabilities regarding the facilities available at the voting booths. The RPD Act, 2016 mandates that all polling stations be accessible to persons with disabilities and that all materials related to the electoral process be easily understandable by and be accessible to them. These have to be implemented.

Recommendations

122. Recommendations for Article 29.
- a) All the antiquated laws which discriminate against persons with disability with respect to political participation should be amended in order to provide the rights due to persons with disabilities.
 - b) The Election Commission of India should adequately focus on improving facilities for disabled voters and candidates in all elections.

Article 30: Participation in cultural life, recreation, leisure and sport

123. The lack of an accessible public transport system and the lack of accessible public structures are the main impediment to full realisation of the right to participation in cultural life, recreation, leisure and sport.
124. Though the Annual Reports of the Ministry of Culture and the Ministry of Youth Affairs and Sports have listed the initiatives taken by them for people with disabilities, the amount spent has been extremely low. A study conducted by the 'Centre for Promotion of Social Justice'

¹⁰⁰ Facilities to be provided to electors with disability - Order of the Hon'ble Supreme Court in WP (Civil) No. 187 of 2004 – Disabled Rights Group Vs. The Chief Election Commissioner & Anr., Letter of ECI to the Chief Elector Officers, 26th October, 2007, accessed at http://eci.nic.in/eci_main/ElectoralLaws/OrdersNotifications/disabled%20right%20group%20W.P.%20No.%20187%20of%2004%20.pdf on 1st February, 2017.

¹⁰¹ Top govt websites are not disabled-friendly, August 26, 2014, accessed at <http://timesofindia.indiatimes.com/india/Top-govt-websites-are-not-disabled-friendly/articleshow/40876938.cms> on 1st February, 2017.

shows that, of the total specific expenditure spent on culture and sports, that for people with disabilities was just INR1.0 million (USD 15,410.7) in 2013-14, INR1.2 million (USD 18,492.8) in 2014-15 and INRR2.0 million (USD 30,821.4) in 2015-16.¹⁰²

Recommendations

125. Recommendations for Article 30.

- a) The Schemes promoted by the Sports Ministry, which are right now very piecemeal in nature, should be made comprehensive enough to cover all aspects, from issues of access to sporting infrastructure, from grants for training to nourishment, equipment and participation, and so on. Adequate allocation of monies for implementing the programmes across India should be made. Similar schemes, that are comprehensive, should be formulated for artists with disabilities by the Ministry of Culture.

Article 31: Statistics and data collection

126. The Ministry of Statistics and Programme Implementation (MoSPI), which is responsible for collecting quality statistics and publication of statistical reports, has not carried out any statistical research on disability in recent years. The last survey on disability conducted by the National Sample Survey Organisation (NSSO), which is a part of MoSPI, was way back in 2002. NSSO undertakes surveys on different socio-economic subjects, conducts village surveys and many others. However, 'persons with disability' as a relevant social group, is not appropriately covered by these surveys. For example, in the employment and unemployment surveys conducted by NSSO periodically, persons with disability as a category has not been included.¹⁰³

127. Similarly, the report of NSSO, 'Children in India 2012 - A Statistical Appraisal', on the state and status of children of India published by the Central Statistics Office, MoSPI, does not throw any light on the state of disabled children who are the most vulnerable in the country.¹⁰⁴ There are many more such glaring examples of omission.

¹⁰² Section No. 2 How is the money spent?, Table 3: Showing classification of heads of allocation and allocations made, An Analysis of Specific Expenditure Related to Persons with Disabilities, Equals, 2016, E-mail sent to Disability-Studies-India googlegroup on April 5th, 2015 by Meenakshi, Equals, Centre for Promotion of Social Justice).

¹⁰³ Baseline Report- Employment Unemployment Surveys of NSSO vis-a-vis Persons with Disabilities, NCPEDP, August, 2014.

¹⁰⁴ Accessed at http://mospi.nic.in/sites/default/files/publication_reports/Children_in_India_2012-rev.pdf on 10th February 2017.

128. The existing policies do not mandate data collection with respect to persons with disabilities utilising various services like health, legal, etc. The only disability data that is maintained by the Government is for programmes in which there is reservation for persons with disabilities, like in the case of employment or poverty alleviation schemes. Even in such programmes, gender segregated disability data or data concerning children with disabilities, is sometimes not maintained. Unless disability and gender segregated data of beneficiaries, allocation and utilisation of funds and so on, is collected, compiled, maintained, updated, shared and disseminated diligently and appropriately, it would be difficult to assess the impact of development programmes with respect to persons with disabilities. It is also important that privacy of the individual data should be ensured.

Recommendations

129. Recommendations for Article 31.

a) There is an urgent need to improve data collected on disability. The Sustainable Development Goals, which India is committed to achieve, mandates the collection and reporting of disaggregated data on the various SDG indicators. The NSSO, which is responsible for data collection in the country, should take up concerted measures, including setting up of a Think Tank etc., to develop strategies for data collection on persons with disability and to find a way to include disability in various other relevant surveys too.

Article 32: International cooperation

130. The First Country Report, 2015 and the Annual Report of the Department of Empowerment of People with Disabilities mention a few international cooperation agreements with DIFD, EU and other international organisations working for the cause of disability in India. There have been focused efforts by NCPEDP, Disabled People's International and the International Disability Alliance (IDA) to facilitate information sharing and capacity building in order to implement the CRPD in India and in other Asia-Pacific countries and African countries.

131. The Legal and Treaties Division of the Ministry of External Affairs is a nodal point that deals with all aspects of International law and which advises to the Government of India.¹⁰⁵ In the Annual Report, 2015-16, there is no mention of any work undertaken with respect to the CRPD. Appendix 1 of the Annual Report lists the multilateral and bilateral

¹⁰⁵ Website of Ministry of External Affairs, accessed at <http://www.mea.gov.in/treaty.htm> on 19th March, 2017.

Agreements/MoUs by India with other countries during the financial year 2014-15 for various issues like roads, IT, WASH, Railways, energy sector, etc. However, there were no agreements or MoUs related to disability.¹⁰⁶

Recommendations

132. Recommendations for Article 32.
 - a) Government efforts to promote international cooperation needs to be strengthened, particularly in the areas of technology, capacity building and research. Certain long term bilateral and multilateral programmes should be planned and executed.
 - b) Since disability is a cross cutting issue, all relevant partnerships related to development should have a disability component built into them.

Article 33: National implementation and monitoring

133. As per The RPD Act, 2016, the implementation and monitoring mechanisms include the setting up of Central and State Advisory Boards and a District Level Committee on disability, appointing a Chief Commissioner and State Commissioners for Persons with Disabilities and specifying, for each District, a Court of Session as a Special Court to try the offences under this Act.
134. The Central and State Advisory Boards on Disability and the District Level Committee are similar to the Central and State Coordination Committee of The Disability Act, 1995. These Committees were nonexistent or defunct in most States. There is no mention of the meetings of these Committees in the Annual Reports of the Disability Department and the Office of the Chief Commissioner for Persons with Disabilities.
135. Though there is a Department for Disability now (earlier it was just a Division in the Ministry), it does not have the manpower to implement the clauses of The RPD Act. Even for the Accessible India Campaign that the Department had launched in 2015, the officials were complaining that they just do not have the requisite manpower needed to implement it.
136. The CRPD obligates State Parties to designate an independent mechanism for implementing the Convention. However, there is no independent mechanism in the country to monitor the implementation of The RPD Act, 2016. There was a demand for setting up a National

¹⁰⁶ Appendix 1, Annual Report 2015-16, Ministry of External Affairs, accessed at https://www.mea.gov.in/Uploads/PublicationDocs/26525_26525_External_Affairs_English_AR_2015-16_Final_compressed.pdf on 18th March, 2017.

Commission to implement the Act but when The RPD Act was passed in Parliament, it did not include that provision. Instead the mechanism that existed for the Disability Act, 1995 was retained, which is that of having the Office of the Chief Commissioner and the State Commissioner to monitor the implementation of the Act. As is well known, the Chief Commissioner and State Commissioners, who are responsible for monitoring the implementation of the Act, have limited powers and their orders are only recommendatory. They are appointed by the Central Government and hence are not independent. Moreover, the hierarchy of the Central and State Commissioners Offices is such that they just do not have the necessary power to implement the provisions of the Act through coordination with various other Ministries. The disability sector had wanted stronger powers for the Commission i.e. to be at par with the National Human Rights Commission (NHRC), which, however, did not happen.

Recommendations

137. Recommendations for Article 33.

- a) An autonomous body with adequate power and resources needs to be established for implementing and monitoring the CRPD and The RPD Act, 2016.
- b) The Department of Empowerment of Persons with Disability should be upgraded to a Ministry to ensure that there are enough resources (financial and human) to effectively coordinate with other Ministries to implement The RPD Act, 2016.