****

**Submission to the UN Human Rights Committee Review of India**

 **126th session of the Human Rights Committee**

This submission is made by National Centre for Promotion of Employment for Disabled People (NCPEDP) on behalf of the National Disability Network (NDN), the National Committee on the Rights of Persons with Disabilities (NCRPD) and the National CRPD Coalition- India for the pending review of India to highlight some areas of concerns regarding India’s compliance with the International Covenant on Civil and Political Rights in the context of persons with disabilities.

The NDN is a network of DPOs that are our state partners across the country taking forward our disability rights work forward in their states while the NCRPD is a think tank of experts and people with disabilities that identify key issues facing the community and come together to advocate for their solution. Together we have recently submitted a parallel report to the CRPD Monitoring Committee and also made oral submissions to them on 11th April, 2019 when the LOI’s for India were adopted in Geneva. NCPEDP is also the Member National Assembly from India for the Disabled Peoples International.

 In drafting this submission NCPEDP has incorporated inputs received from partners across India and has drawn from the Parallel Reports submitted to the CRPD Monitoring Committee by NCPEDP and the National CRPD Coalition – India, in the context of implementation of Civil and Political rights. We hope this submission will inform the Human Rights Committee of the situation of civil and political rights of persons with disabilities in India as the Committee drafts its list of issues for the adoption at the 126th Session, Geneva in July 2019.

**Executive Summary**

India acceded to the International Convention on Civil and Political Rights (ICCPR) on 10th April 1979 and also ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) on 1st October, 2007. It has, since then, legislated the Rights of Persons with Disabilities Act 2016 and the Mental Health Care Act 2017 in order to bring domestic laws in harmony with the Convention. Other laws are yet to be harmonized.

India has a strong Constitution which guarantees fundamental rights to all. However Article 15 of the Constitution while prohibiting discrimination based on grounds of any religion, race, caste, sex, place of birth or any of them does not explicitly mention disability as grounds of discrimination.

The Indian Census 2011 pegs number of persons with disabilities in India at 2.21% which is grossly unrepresentative (disability sector estimates 4-5%, and World Bank estimates 4-8%) . Only 57% are certified which is a prerequisite for accessing rights and entitlements .The country is about to undertake a population census in 2021 but currently the questions on disability are based on the medical model as against the Washington Group recommendations. It has been proven that given the stigma attached to disability in India, the responses to such a line of questioning elicit a negative response and we also fear that these questions may exclude the 12 newly recognised disabilities under the new legislation.

 There has been a systemic failure by the Government in realizing rights provisioned in the UNCRPD. Whilst the CRPD makes disability discrimination a legal offence the RPD Act defends disability discrimination based on ‘legitimate aims’. Acknowledging that all persons with disabilities have legal capacity the law diminishes this by introducing ‘limited guardianship’. Political participation is confined only to physical access to polling stations and accessible material and EVM’s , and if newspaper reports are to go by then even this has not happened. The CRPD requires all ratifying states to move towards de-institutionalisation but no efforts are being made to do so and persons with disabilities, including women and children with disabilities continue to face violence and ill treatment in institutions.

The widespread use of religiously inspired political appeals has once again catapulted the Right wing BJP to form the government with a huge majority. Whilst ‘Disability’ finds mention in the BJP election manifesto it remains to see the Governments’ commitment towards mainstreaming persons with disabilities in all Civil, Political and Socio Economic realities.

**Article 3:**  **Equality of women and men**

1. The Domestic Violence (DV) Act does not protect women with disabilities as it can only be used against husband and in laws but cannot be used against one’s own family. The nature of domestic violence that a woman with a disability experiences is different and unique and is not captured under the definition of domestic violence under the law. Disabled women who are not married cannot use this. Secondly, many women with disabilities are the 'second wives' of already married men, and as per the Supreme Court the DV Act cannot be used against a person one is not legally married to, though it covers live in relationships. Third, the nature of domestic violence and abuse that a woman with a disability experiences is quite different and unique and it not captured under the definition of domestic violence under the law.  The Sexual Harassment of Women at the Workplace Act has no provisions for accommodation for disabled women during inquiries and is also not being used in the (sheltered) workshops and 'training centres' run for persons with disabilities (often by NGOs) because they are not identified to be employers for the purpose of the law

The Ministry of Women and Child Development does not include women with disabilities in their data collection process. None of the Ministries provide gender segregated data when reporting on beneficiaries with disabilities. Women specific programmes have not been 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.[[1]](#footnote-1) 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.

**Recommendations:**

* Women with disabilities should be included in the decision making bodies/committees involved in planning and implementation of relevant policies and programmes;
* Amend all relevant laws and programmes meant for women to include specific provisions for girls and women with disabilities;
* Develop specific programmes to facilitate women with disabilities to access various programmes and schemes meant for women;
* Ministry of Women and Child Development to provide data on number of beneficiaries with disabilities under its schemes and programmes and to set up a disability cell within. Gender segregated disability data should be collected by all the relevant Ministries.
* Amend all women related laws to make them inclusive of women with disabilities

and align them with provisions of the CRPD.

**Article 6:** **Right to life**

The Right to Life for people with disabilities is not explicitly mentioned in the disability laws. There are several cases of children and elderly people with disabilities being abandoned, abused and even killed.[[2]](#footnote-2) 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.[[3]](#footnote-3) A recent writ filed in the Gujarat High Court by a father of a girl living with severe Cerebral Palsy asking for euthanasia is a recent example of this.[[4]](#footnote-4)

In Kashmir there is a [reported trend](https://www.rediffmail.com/cgi-bin/red.cgi?red=https%3A%2F%2Findianexpress%2Ecom%2Farticle%2Fexplained%2Fin%2Dthe%2Dkilling%2Dof%2Da%2Dmentally%2Dill%2Dman%2Din%2Djk%2Da%2Dfamiliar%2Ddisturbing%2Dtrend%2D5073314%2F&isImage=0&BlockImage=0&rediffng=0&rogue=ba645364b4daa0c5aa37900fa3dba838e3ab996c&rdf=UHdTMAh7XjJcbFdqUHBQdgIw) of persons with psychosocial and learning disabilities shot at by Indian armed forces on which the Jammu & Kashmir Coalition of Civil Society (JKCCS) is presently collecting data for a forthcoming report.[[5]](#footnote-5)

A survey by Handicap International based on 769 responses gathered through three online surveys informed that during disasters 54% persons with disabilities were strongly impacted and reported new impairments, 27% reported psychological impact and sexual abuse. 75% did not have adequate access to food, water shelter, and health services.50% stated they could not access specific services including assistive devices, rehabilitation, interpreters. 92% of humanitarian actors believe that persons with disabilities are not properly accounted for and 85% recognized that they are more vulnerable during disasters.[[6]](#footnote-6)

The Right to Food is fundamental to “right to life. The National Food Security Act 2013 makes food entitlements a legal right. 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;**

* Formulate schemes to promote the right to life in terms of adequate financial support, services, enabling food entitlements and sensitisation of the medical fraternity, judiciary and the community;
* Security agencies must be made aware about the rights of persons with disabilities in conflict areas.
* Formalise inclusive disaster management policies and practices

**Articles 9 and 11: Liberty and security of person:**

**Art. 6-8:**  Protecting the integrity of the person

People with psychosocial disabilities continue to be confined in government and privately owned mental hospitals and institutions across the country and are subject to physical and sexual violence, ill treatment and abuse including the use of ECT. As recent as January this year (2019), the Supreme Court had ordered the release of 22 mentally ill patients kept in chains from a faith-based asylum. [[7]](#footnote-7).

The National Crime Records Bureau suggest that a total of 5203 inmates were reported as mentally ill. Out of these, almost 50 percent are under trial.[[8]](#footnote-8)“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 cases, 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.”

Poverty and lack of community based rehabilitation services in large parts of the country, specially in the rural areas results in abandonment and destitution of children with intellectual and developmental disabilities. These children often find their way to homes run by the Government or supported by the Government with no due diligence or social audit. Over the years, several newspapers have been sporadically reporting incidents of death and ill treatment and abuse these children suffer in the government run institutions. Surprise visits and recommendations for improvement by the National and State Commissions for Protection of Child Rights have not been implemented. The living conditions of most of these institutions can be appalling as per several reports.[[9]](#footnote-9) Appalling cases of abuse have been reported from homes in Muzaffarpur, Bhopal and even the state run National Institute for the Visually Handicapped.[[10]](#footnote-10)

Whilst the Government has taken steps to create awareness on the issue , the Guidelines for Adoption[[11]](#footnote-11) 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.”

Many ‘beggars’ homes’ have been converted into ‘old age homes’ or ‘disabled homes’, where people who are homeless, elderly or destitute and people with disabilities are “lumped” together without any reasonable accommodation, services or care.[[12]](#footnote-12)

**Recommendations :**

* Recognise that any form of institutionalization contravenes the provisions of International laws which have been ratified by India;
* Establish guidelines and monitoring mechanisms to improve conditions and prohibit detention and involuntary treatment in mental hospitals and institutions including private psychiatric institutions;
* There is an urgent need for a shift from institutional based care to voluntary community-based care especially for people with psychosocial disabilities.  The Government should develop appropriate programmes and allocate adequate resources for an effective implementation of community-based care;
* Conduct social audit and accessibility audits of all shelter homes, institutions and prisons to ensure accessibility, reasonable accommodation and availability of disability specific support services and make their functioning transparent;
* Implement the Supreme Court of India judgment in CIVIL APPEAL NO.11938/2016 (Arising out of S.L.P.(Civil) No.39321/2012, Reena Banerjee vs NCT of Delhi dated December 8, 2016 which requires all State Governments to monitor, evaluate and suggest remedial measures for improvement of institutions for persons with psychosocial disabilities and intellectual and developmental disabilities and for the Central Government to develop a policy for such institutions. This should be an interim measure until voluntary community care is established ;
* All municipality shelters should be made accessible to homeless people with disabilities. Safety and privacy should be ensured for people with disabilities in such facilities;
* All prisons should be made accessible, not just in terms of physical infrastructure but also in terms of services;
* Sensitise staff and administration on the needs of disabled people in jails, shelter homes, etc;
* Direct all States and Union territories to implement directions issued by Supreme Court of India in Contempt petition C) No. 1653/2018 in W.P.(C) No. 412/2016 Gaurav Kumar Bansal Vs Mr Dinesh Kumar and others dated 25th February, 2019 to set up half way homes in an effort to deinstitutionalize persons with psychosocial disabilities who have recovered post treatment and for those who are abandoned and living in the streets;

 **Article 7: Freedom from exploitation, violence and abuse**

The National Crime Records Bureau[[13]](#footnote-13) maintains statistics regarding crimes 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.

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. 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.”[[14]](#footnote-14)

Persons with disabilities in judicial custody are subject to denial of liberty, indignity, abuse, ill treatment and even basic facilities like access to adequate health services are denied as is evident in the much reported case of Dr Saibaba who is a wheel chair user and is undergoing life imprisonment due to his alleged involvement with Maoists. [[15]](#footnote-15)

Judicial apathy is further highlighted by the recent report of a person with disability dying whilst in judicial custody due to abuse suffered at the hands of the police. [[16]](#footnote-16) In Kashmir , use of metal pellets from pump action shotguns by the Indian Army personnel have led to blinding, killing and traumatising hundreds of people[[17]](#footnote-17)

 Abuse and ill treatment also happens within families specially to persons with intellectual disabilities. [[18]](#footnote-18). Instances of rapes, lynching and other forms of torture are reported on a regular basis.[[19]](#footnote-19)

There are also cases where girls with disabilities in India face forced sterilization. A study conducted by the Oxfam Trust in 12 Districts of the eastern Indian state of Odisha, which surveyed 729 disabled women, girls and family members, found that 6% of women with a physical disability and 8% of women with intellectual disabilities had been subjected to forced sterilizations.[[20]](#footnote-20)

### Recommendations:

* Urgently create community based support systems and structures across the country for people with disabilities and their families to avail need based support and information on all matters related to disability;
* Spread awareness amongst people with disabilities, their families, medical professionals, and so on regarding the right to integrity of people with disabilities;
* Ensure counselling and other support available for general public whether provided by the Government or NGO should be accessible and inclusive;
* Provide the needed accommodations in cases of rape, violence, abuse and torture and ensure speedy trial;
* Victims of rape, abuse and violence must receive timely compensation which takes into account disability related costs. All States and UT’s to implement the directions
* of Supreme Court dated 11 February, 2016 in CA No. 884 OF 2015 Tekan Alias Tekram vs State Of Madhya Pradesh and draw specific guidelines for compensation and rehabilitation of women with disabilities who are rape survivors keeping their vulnerability in mind;
* Sensitise judicial services, police administration, and health workers and officials on the needs and rights of disabled people.

**Article 14: Access to Justice**

Physical access to courts all over the country remains a huge challenge for persons with disabilities. Vidhi Centre for Legal Policy undertook a survey of 665 district court complexes in 2018 to study the nature of accessibility of court complexes in the lower judiciary in India. Preliminary findings revealed that the state of accessibility for persons with disability is quite poor.[[21]](#footnote-21)

In addition, all court documentation and court room procedures remain inaccessible, specially to those who are deaf and hard of hearing and those with psychosocial , intellectual and developmental disabilities. All those involved in the delivery of the justice system remain insensitive to needs of persons with disabilities.

 Further delivery of justice to persons with disabilities is prolonged over long periods of time in spite of resolutions adopted In the Chief Justices' Conference, 2016 which states speedy disposal of cases of persons with disabilities;

**Recommendations:**

* National and State Legal Services Authorities should make provisions for reasonable accommodations for persons with disabilities to access justice;
* Standards should be developed to make courts accessible – not just the buildings but also information (websites and documents) and availability of reasonable accommodations to access justice. These should also be part of the National Court Management Systems[[22]](#footnote-22)
* Include sensitisation programmes for all staff in the police, paralegal personnel, volunteers, court staff, lawyers, judges, legal language interpreters and judicial administration, as part of their training curriculum;
* Implement decision in Resolutions adopted In the Chief Justices' Conference, 2016 that (As provided in Supreme Court of India website) which states; “*Cases relating to Persons with Disability shall be taken up on priority basis*”

## **Article 16: Equal recognition before the law**

The RPWD 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”**.** However, there is contradicting clause in the same Act that provides for limited guardianship.[[23]](#footnote-23). The National Trust continues to appoint guardians for people with certain disabilities.

 Further, the RPWD Act 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. Despite these provisions, banks and financial institutions ask for guardianship[[24]](#footnote-24). People with disabilities are often denied civil rights including property rights through Limitation Act, 1963 including Law of Adverse Possession.[[25]](#footnote-25)

The Act provides for setting up support structures for facilitating the exercise of legal capacity. It has been two years since the passage of the Act, the support structures are still not in place.

### Recommendations:

* The Act should be amended to remove the limited guardianship which is contrary to full legal capacity. All other laws and policies should be amended to ensure that persons with disabilities enjoy legal capacity on equal basis with others;
* Support structures, guidelines, budget and administrative mechanisms should be put in place along with appropriate safeguards, and implemented in a time bound manner, to ensure people with disabilities get the needed support for exercising their legal capacity as mandated in the law. These have to be developed in consultation with DPOs.
* Modify Section 6 of Limitations Act 1963 to read as “At any circumstances, no provision contained in Limitation Act, 1963 and its schedules shall apply against persons with disabilities to deprive their property rights and to deprive their Civil Remedy before any Court of Law.

**Article 17:** **Right to Privacy**:

People with disabilities particularly those wearing prosthetics, their privacy is compromised at airports during the security checks, etc. There have been several reports on how privacy is compromised in institutions for people with disabilities. [[26]](#footnote-26)

Many NGOs take an in-depth case history of individuals, including information regarding their family, marital relationships, and so on. However, most NGOs do not have a data protection policy and share data liberally with schools, doctors and even donors. Donors must insist on data protection policies of organisations supported by them.

There is severe loss of privacy in homes, communities and families, especially persons with high restriction in participation, mental, intellectual, multiple and psychosocial disabilities; and people using aids and appliances. The same applies to people, including women and children living in disability specific institutions.

People accessing general entitlements through use of Aadhaar card (Unique Identification number) have experienced serious invasion of privacy and compromise of personal data[[27]](#footnote-27).

### Recommendations

* 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. A suitable code of ethics should be formulated in this regard.
* The training curriculum for rehabilitation professionals should include a topic detailing the right to privacy of disabled persons in it.
* The laws which govern the right to privacy directly and indirectly should explicitly include people with disabilities.
* Information should be provided on legislative provisions that ensure privacy of personal data of persons with disabilities in all settings, including Unique Identification process and disability certification. Define the standards adopted for service provider and support relationships, to maintain the respect and dignity of persons with disabilities.

**Article 19:** **Freedom of Expression**

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. There are no steps also to promote tactile sign language for people with deafblindness.

The Government has set up an National Resource Centre for Augmentative and Alternative Communication in 2011 to promote augmentative and alternative communication through training and research. However, information regarding its reach and impact could not be found in the Report or on the website.

The National Policy on Universal Electronics Accessibility, 2013 has not been implemented nor have emergency and essential services made accessible through ICTs, as required by RPWD Act 2016[[28]](#footnote-28). The updated Government of India Guidelines for Websites[[29]](#footnote-29) has not been implemented even though the deadline for making services accessible as per RPWD Act ends in June 2019.

The Draft Policy for Making Television Accessible to People with Hearing Disabilities too should be expanded to include audio description for the blind but even in its current format face huge resistance from Broadcasters. The recommendations for making ICT Accessible to People with Disabilities[[30]](#footnote-30) by the Telecom Regulatory Authority of India too have not been implemented yet.

### Recommendations

* The Government of India should include Indian Sign Language as an official language and take steps to promote tactile sign language too;
* Expand the services of the National Resource Centre for Augmentative and Alternative Communication systematically to other states, districts and villages;
* June 2019 will see the end of the 2 year period for ensuring accessibility of all services and products. The Government must take strict measures to ensure the provisions of the Act are enforced within set timeslines.

**Article 23**: **Living Independently and Being Included in the Community**

Support services for ‘living independently’ are almost non-existent. There are hardly any initiatives towards in-home, residential and other community support services. A few privately owned services have been initiated for elderly people in certain cities but these do not cater to the needs of people with disabilities and are exorbitantly priced, beyond the reach of most disabled persons. Some non-governmental organisations (NGOs) run Community Based Rehabilitation (CBR) programmes but their reach is very limited.

The National Trust has care associates 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 (2017-18) of the National Trust. [[31]](#footnote-31)

Despite the RPWD Act, people will disabilities are excluded from all community processes. As recently as last week 12 adults with autism were allegedly told by a local swimming academy to come for lessons at separate hours as other pool members were uncomfortable swimming with them**.[[32]](#footnote-32)**

**Recommendations:**

* A nationwide programme for promoting independent living within the community should be introduced. Local authorities should be mandated to conduct a survey with local residents to provide appropriate support/reasonable accommodation within the community.
* Specific schemes should be developed for providing need based support to people with high support needs, as mandated in the Act.
* All community services should be made accessible for people with disabilities in a time bound manner.
* There should be an accessible helpline to provide information regarding the schemes, services and support available in the community.
* The National Trust should strengthen its schemes for providing personal assistance and setting up many more group homes to ensure better reach.

## **Article 24 Child protection:**

Various laws and policies reference children with disabilities. However, no mention has been made of the specific actions which can be taken to mainstream children with disabilities and to promote equal rights. Some examples of the inadequacy of the laws and systems are given below[[33]](#footnote-33):

* 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[[34]](#footnote-34)  , there is nothing further in the Act to acknowledge the evolving capacities of the child and the supports and reasonable accommodation necessary for the child to participate in legal proceedings or in the provision of care and protection.
* Elaborate quasi-judicial systems such as Child Welfare Committees, Child-lines, the State and District child protection societies, adoption agencies and homes exist. Unfortunately, experience and study show that none of these agencies know how to respond to children with disabilities and are hotbeds of abuse and violence.
* The Registration of Births and Deaths 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 children with disabilities do not have birth certificates.[[35]](#footnote-35) The national average for birth registration is only 58 % i.e. 42 % of the total number of births are *not* registered in the country.[[36]](#footnote-36)
* People with disabilities and elderly people have difficulty in procuring the Unique Identification Authority of India (UIDAI) or ‘Aadhaar’ identification number due to the inaccessibility of the enrolment centres, enrolment and biometric procedures, insensitive staff, software related issues, inaccessibility and user unfriendliness of the Aadhaar website[[37]](#footnote-37)and lastly the lack of appropriate information on the website. (The FAQ page ‘enrolling differently abled” is blank).[[38]](#footnote-38)
* As per the Eighth All India School Education Survey (8th AISES), published in 2014, only 21% schools adhere to inclusive education for disabled children; Of these, the proportion of primary, upper primary, secondary and higher secondary schools are 60%, 28%, 7% and 55% respectively; Only 1% teachers have received training for at least two weeks in inclusive education; Out of the total number of schools in the country,10% have handrails, 44% have ramps, 4% have an adapted laboratory and 8% have an adapted lavatory; Braille books are available in only 7% schools. As per the Government report, 54% of the disabled children with multiple disabilities never attended educational institutions.  Also, 50% of the children with mental illness never attended an educational institution.[[39]](#footnote-39)  That the highest number of out of school children are those with intellectual impairment indicates that India’s education system is still IQ driven.
* There are quite a few special schools in the country which are funded by Department of Empowerment of People with Disabilities. There have been hardly any audits /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). Hence, the approach to a great extent is charitable rather than ensuring quality education.

### Recommendations

* A policy should be formulated for providing home-based services to ensure that people with disabilities to get the Unique Identification Number. Staff should be sensitised and necessary changes should be done in the process to make it disabled friendly, in consultation with people with disabilities.  The website should be made compliant to web accessibility standards and the content should be made user friendly.
* 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.
* The Ministry of Women and Child Development should have focused measures to include children with disabilities in all their programmes, collect and maintain quantitative and qualitative data of the number of children with disabilities covered by their scheme and promote awareness on the dignity and pride of children with disabilities.
* Take measures to protect and promote the identity of children with disabilities and to express her/his views freely. Children with disabilities should be enabled for inclusion into Children's Parliaments. Further, Children with Disabilities Parliaments should be promoted in order to discuss their issues and to enable them to come up with their own solutions;
* The disability component should be integrated into the curriculum of the bachelor’s/master’s degree/diploma/certificate courses in education so that all teachers become aware and are given the capacity to teach children with disabilities;
* Compulsory training should be imparted to all existing teachers in the area of inclusive education;
* 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 and all education of children with disabilities should be transferred to be under the purview of MHRD;
* Trained ancillary staff and personal assistants should be provided to assist children with disabilities in schools whenever they require the same. Children with disabilities should be consulted on any measures taken by the school authorities regarding them;
* The Government must penalize those private and public educational institutions which do not provide accessible infrastructure and educational services to disabled students;
* There should be specific programmes for promoting education for girls with disabilities;

**Article 25** **Participation in political and public life**

Persons with intellectual and psychosocial disabilities and also people affected by leprosy continue to be denied the right to exercise their electoral franchise. Article 16(b) of the Representation of the People Act (1951) disqualifies a person who “is of unsound mind and stands so declared by a competent Court”

Further the Rights of Persons with Disabilities Act of 2016 which has been legislated to harmonize with International law whilst providing for accessibility in the election process does not provide the right to persons with disabilities to be elected and hold political office. There is no reservation in seats to contest elections and no constituencies reserved as is legally provided for the SC and St communities;

 Physical access to polling stations continues to remain a challenge as per several news paper reports of the Lok Sabha elections of 2019 notwithstanding the RPD Act.[[40]](#footnote-40)

E-roll Data 2019 of electors published by the ECI mentions only the statistics of men, women, transgender, service voters etc but not that of persons with disabilities registered as electors. A systematic mechanism to collect data on electors with disabilities across the country is not yet worked out by ECI. [[41]](#footnote-41)

 Further, Forum for Election Management Bodies of South Asia (FEMBOSA) Resolution 2015, signed in agreement by the Election Commissioners of SAARC Countries including the then Election Commissioner of India, , that has consented to the implementation of a 9 point agenda on political participation of persons with disabilities and provides for the inclusion of persons with intellectual and psychosocial Disabilities in electoral process remains unimpllemented.

**Recommendations:**

• Repeal article 16(b) of the Representation of the People Act (1951;

* Amend the Rights of Persons with Disabilities Act 2016 to provide a fixed reservation in seats to contest elections and specially reserve constituencies for persons with disabilities;
* Implement Resolution 2015 of Forum for Election Management Bodies of South Asia (FEMBOSA) that has consented to the implementation of a 9 point agenda on political participation of persons with disabilities,;
* Election Commission of India to include persons with disabilities in E roll Data in addition of statistics of men, women, transgender, service voters etc

**Article 26: Non-discrimination**

 Article 15 of the Constitution prohibits the State from discriminating any citizen on ground of any religion, race, caste, sex, place of birth or any of them but does not mention disability as grounds for discrimination.

The RPD Act 2016 states, “No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim”. The sub-clause, “unless..... legitimate aim” clause gives power to implementing authorities to discriminate against people with disabilities in the pretext of “legitimate aim”. Moreover, there are over 150 laws that discriminate against people with disabilities. As per the research conducted by Vidhi Centre for Legal Policy, 119 laws discriminate against persons affected by Leprosy and around 146 laws discriminate against “deaf-mute” persons. [[42]](#footnote-42).

The criteria for certifying people with benchmark disability in India is still medical based. It neither takes into account the functional limitations in a holistic manner nor the barriers to participation.  For example, a person with Multiple Sclerosis is considered as a person with benchmark disability only if she/he has locomotor or intellectual disability. Issues of fatigue, imbalance, incontinence are not considered.[[43]](#footnote-43) In case of Leprosy, the loss of sensation and the attitudinal barriers are not considered in the evaluation. Similar are the issues with many other disabilities, like blood disorders, Specific Learning Disability, etc.  Experts with disabilities were not included in the formulation of the Disability Certification Guidelines thus violating the

essence of the CRPD. Persons living with Thalassemia, Multiple Sclerosis etc continue to face challenges in being certified as highlighted in newspaper article.[[44]](#footnote-44)

**Recommendations:**

* The Constitution of India should be amended specifically to include disability in Article 15 to ensure non-discrimination of people with disabilities.
* The Government needs to review all the relevant laws and amend them in a time bound manner. Any new law being formulated in the country needs to be in line with the CRPD.
* The Guidelines for Disability Certification should be amended. Experts with disabilities should be involved and consulted while drafting the guidelines.
1. 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. [↑](#footnote-ref-1)
2. 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](file:///E%3A%5CData%5CDesktop%5CDocuments%5Ccrpd%20committee%20%20geneva%20submissions%5C%20http%3A%5Ctimesofindia.indiatimes.com%5Ccity%5Cmumbai%5CGrandma-killed-disabled-toddler-cooked-up-kidnap-story-Police%5Carticleshow%5C40327246.cms); <http://www.thehindu.com/news/cities/chennai/thalaikoothal-death-in-26-shades/article8251311.ece>  on 26th September, 2016. [↑](#footnote-ref-2)
3. <http://indianexpress.com/article/india/india-others/either-allah-cures-them-or-takes-them-back/> [↑](#footnote-ref-3)
4. http://www.mymedicalmantra.com/gujarat-father-seeks-euthanasia-for-22-yr-old-daughter-suffering-from-cerebral-palsy/ [↑](#footnote-ref-4)
5. <https://indianexpress.com/article/explained/in-the-killing-of-a-mentally-ill-man-in-jk-a-familiar-disturbing-trend-5073314/> [↑](#footnote-ref-5)
6. . https://handicapinternational.ch/sites/ch/files/documents/files/disability-humanitarian-co [↑](#footnote-ref-6)
7. <https://www.business-standard.com/article/pti-stories/22-mentally-ill-inmates-of-badaun-asylum-handed-over-to-family-members-119010500317_1.html> [↑](#footnote-ref-7)
8. 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. [↑](#footnote-ref-8)
9. <https://indianexpress.com/article/cities/delhi/life-on-the-inside-at-the-asha-kiran-shelter-home-mentally-challenged-in-rohini-delhi-5119913/> and <https://thewire.in/106235/asha-kiran-conditions-dcw/> [↑](#footnote-ref-9)
10. <https://www.newsclick.in/sexual-abuse-charges-visually-impaired-girls-dehradun-raise-many-questions> [↑](#footnote-ref-10)
11. Section 9, Point 5 of Guidelines for Adoption <http://www.mphc.gov.in/pdf/j3-060314.pdf> accessed on 29th November 2015. [↑](#footnote-ref-11)
12. Sehar Counseling Center Progress Report 2008, Pune: Bapu 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 Sept 2010. [↑](#footnote-ref-12)
13. Crime in India, 2015 Statistics, The National Crime Records Bureau, accessed at<http://ncrb.gov.in/>. [↑](#footnote-ref-13)
14. t[https://qz.com/306299/india-treats-its-mentally-disabled-worse-than-animals/](https://qz.com/306299/india-treats-its-mentally-disabled-worse-than-animals/%22%20%5Co%20%22Article%20in%20Quartz%20India) on 3rd February, 2017. [↑](#footnote-ref-14)
15. <https://thewire.in/rights/un-rapporteurs-gn-saibaba-release-health>; [↑](#footnote-ref-15)
16. <https://timesofindia.indiatimes.com/city/chennai/disabled-city-man-dies-in-custody-cop-suspended/articleshow/67214504.cms> [↑](#footnote-ref-16)
17. <https://www.amnestyusa.org/reports/losing-sight-in-kashmir-the-impact-of-pellet-firing-shotguns/> [↑](#footnote-ref-17)
18. <https://www.indiatoday.in/india/story/madras-high-court-adoptes-disabled-man-333451-2016-08-05> [↑](#footnote-ref-18)
19. <http://www.sikhnewsexpress.com/humiliated-by-the-mob-before-suffering-a-terrible-death-mentally-disabled-woman-is-stripped-shaved-and-lynched-by-indian-villagers-after-being-accused-of-trying-to-snatch-a-child-sne/> [↑](#footnote-ref-19)
20. <https://www.globalcitizen.org/en/content/forced-sterilization-girls-disabilities-hysterecto/> accessed on 6th February 2019. [↑](#footnote-ref-20)
21. <https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/5ad835ac8a922d956d94a6f6/1524119030760/20180419.Infra.Final.pdf> [↑](#footnote-ref-21)
22. In 2012, the National Court Management Systems Committee (‘NCMS’), published a report on the Court Development Planning System which identified certain benchmarks to make every courtroom user-friendly and accessible.   [↑](#footnote-ref-22)
23. E Mail from Amba Salelkar, Equals Centre for Promotion of Social Justice to NCPEDP Secretariat on 25th December 2018. [↑](#footnote-ref-23)
24. The National Handicapped Finance Development Corporation (NHFDC) allows for an only parent’s association to set up business ventures for persons with intellectual impairments and learning disabilities. Though it expects work to be done by the individual with disability, the income generated is expected to be managed by the parent’s association. (E Mail from Rajiv Rajan, Ektha to NCPEDP Secretariat, dated 14th January 2019) [↑](#footnote-ref-24)
25. <https://www.advocatekhoj.com/library/bareacts/limitation/6.php?Title=Limitation%20Act,%201963&STitle=Legal%20disability> [↑](#footnote-ref-25)
26. <https://www.thenewsminute.com/article/air-travel-india-remains-nightmare-persons-disabilities-98186> [↑](#footnote-ref-26)
27. News Staff (2018). “Aadhaar security Breaches”. The First Post, 25 Sept 2018. [↑](#footnote-ref-27)
28. <https://factordaily.com/tested-18-government-apps-citizens-found-accessibility-issues-disabled/> [↑](#footnote-ref-28)
29. <https://web.guidelines.gov.in/> [↑](#footnote-ref-29)
30. [http://main.trai.gov.in/sites/default/files/RecommendationsICT09072018,%20\_0.pdf](http://main.trai.gov.in/sites/default/files/RecommendationsICT09072018%2C%20_0.pdf) [↑](#footnote-ref-30)
31. . Under Sahyogi scheme, 56 organisations have been sanctioned in which a total number of 1009 Care Associates have been trained. Under Gharaunda scheme, 50 projects have been sanctioned in which a total number of 993 beneficiaries benefitted. (Page 14, Annual Report (2017-18), National Trust, Empowering Abilities, Creating Trust) [↑](#footnote-ref-31)
32. <https://newzhook.com/story/22425> [↑](#footnote-ref-32)
33. 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. [↑](#footnote-ref-33)
34. Section 2.1 of the Juvenile Justice Act 2006, accessed from <http://wcd.nic.in/act/2315> on 21st December, 2016. [↑](#footnote-ref-34)
35. ‘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.   [↑](#footnote-ref-35)
36. UNICEF India Website

<http://unicef.in/Story/1133/Birth-Registration-the-picture-in-India> accessed on 28th September, 2016. [↑](#footnote-ref-36)
37. “We tested 18 Government Apps, and Most are not Fully Accessible to the Disabled”, The Centre for Internet & Society. The article was published in <http://factordaily.com/tested-18-government-apps-citizens-found-accessibility-issues-disabled/> 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>. [↑](#footnote-ref-37)
38. Section FAQ - Unique Identification Authority of India Website accessed on 27th February, 2017 at <https://uidai.gov.in/16-english-uk/aapka-aadhaar/53-faq.html#enrolment2> [↑](#footnote-ref-38)
39. Disabled People in India, A Statistical Profile- 2016 , <http://www.mospi.gov.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf>, accessed on 1/2/2019 [↑](#footnote-ref-39)
40.  [↑](#footnote-ref-40)
41. [http://164.100.117.97/WriteReadData/userfiles/1Electoral%20Roll%20Data%20for%202019%20(Based%20on%20Formats%201-8)%20(1).pdf](http://164.100.117.97/WriteReadData/userfiles/1Electoral%20Roll%20Data%20for%202019%20%28Based%20on%20Formats%201-8%29%20%281%29.pdf) [↑](#footnote-ref-41)
42. These laws range from as far back as 1866 to as recently as 2017, which highlights that not only are the discriminatory laws still on the statute books but new laws are being added that discriminate in a similar manner. One such example is the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules 2017, which disqualifies a “deaf-mute” person from being a member of a Market Committee. (E-mail by Dhvani Mehta, Vidhi Legal Centre to DEOC dated February 2019) [↑](#footnote-ref-42)
43. Email by Renuka Malakar, Multiple Sclerosis Society of India (MSSI) to DEOC in February 2019 [↑](#footnote-ref-43)
44. <https://health.economictimes.indiatimes.com/news/industry/gauhati-hc-asks-health-dept-to-examine-thalassemic-student-for-disability-certificate/67103531> [↑](#footnote-ref-44)