

**Supplementary Information to the List of Issues
(LOIs) in Relation to the Initial Country Report
of India on the Implementation of the
Convention on the Rights of Persons with
Disabilities**

**Submitted on
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**Submitted by:
Women with Disabilities India Network-India**

**Alternate Report towards Article 6
2019**

CONTENTS

	Page No.
1. Abbreviations	4
2. Executive Summary	5
3. Submitting Organization	6
4. Introduction	7
5. Articles 1 to 4 - Purpose and general obligations (arts. 1-4)	7
B. Specific rights (arts. 5-30)	8
Article 6 – Women with disabilities	
Article 7 and 24 – Children with disabilities and Education	
Article 12 – Equal recognition before the law	
Article 13 – Access to justice	
Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment	
Article 16 – Freedom from exploitation, violence and abuse	
Article 17 – Protecting the integrity of the person	
Article 23 – Respect for home and the family	
Article 25 – Health	
Article 27 – Work and employment	
C. Specific obligations (arts. 31-33)	14
Article 31 – Statistics and data collection.	
6. Recommendations	14
7. Annexure- I	
1. The WHO World Report on Disability, [LOI 6 (a),document page 1]	
2. Case studies - Sexual assault of women with psycho-social disability [LOI 12 (b), document page 1]	
3. Case studies - Sexual assault of Cerebral Palsy women, [LOI 13 (a)], document page 1]	
4. Comment of UN Committee, General Comment No. 3, Article 6: on Barriers to Accessing Justice by Women with disabilities, [LOI 13 (b), document page 1]	
5. Case study - Suchita Srivastava case 2009 [LOI 13 (b), document page 2]	
6. Case evidence – Gang rape of a 16-year-old girl with hearing and speech disability [LOI 15, document page 2]	

7. Case studies - Cases from Human Rights Watch on kidnapping, rape, left abundant – [LOI 16 (c), document page 2]
8. Case studies - Access to sexual health related information, [LOI 17, document page 2]
9. Case studies – Forced sterilization of Women and Girls with Disabilities, [LOI 17, e document page 3]
10. Case studies – Right to Family and adoption, [LOI 23, document page 3]
11. Case studies – Right to family {LOI 25 (b), document page 3}
12. Oral testimony – Violation of Rights to health [LOI 25 (b), document page 4]

7. Annexure – II List of Organisations

8. Annexure – III List of LOIs

Abbreviations

AIC – Accessible India Campaign

CARA- Central Adoption Resource Authority

CEDAW- Convention on the Elimination of All Forms of Discrimination against Women

CRPD- Convention on the Rights of Persons with Disabilities

DePWD- Department of Empowerment of Persons with Disabilities

DPO- Disabled Peoples' Organization

JSY- Janani Suraksha Yojana

LOI- List of Issues

MHCA- Mental Health and Care

MNREGA- Mahatma Gandhi National Rural Employment Guarantee Act

MSJE- Ministry of Social Justice and Empowerment

MTP- Medical Termination of Pregnancy

NALSA- National Legal Services Authority

NCW- National Commission for Women

NFHS- National Family Health Survey

NCRB- National Crime Records Bureau

NRHM- National Rural Health Mission

NTA- National Trust Act

POCSO - Protection of Children from Sexual Offences

PWDVA- Protection of Women from Domestic Violence Act

RPD Act- Rights of Persons with Disabilities Act

SC- Scheduled Caste

SDG- Sustainable Development Goal

ST- Scheduled Tribe

UN- United Nation

WHO- World Health Organizations

Executive Summary

This submission is being made by the Women with Disabilities India Network, a national coalition of women with disabilities activists, academics and organizations in India, who are jointly submitting this report. The Network has made submissions in response to India in 2014 to the CEDAW Committee and in 2016 to Universal Periodical Review. For this submission 20 consultations across rural and urban India were conducted over one year. The report was produced by a group of leading women with disability activists and their organizations. In April members attended the 11th pre-session and presented the report. After receiving LOIs a national consultation was organized, this report was written after these and joining of new partners.

We submit that Women with disabilities in India have very little access to the *entitlements*, despite a plethora of programmes and schemes geared towards women's empowerment and social protection as there is *little or no budgetary allocation* made for them. There are few general gender based policies and laws that mainstream rights of women with disabilities in India. There is even less disaggregated data to confirm that policies have been implemented for women with disabilities in the areas of education, health, work and employment..

Women and girls with disabilities fare poorly in the educational arena and drop out at menstruating age as accessible toilets are not provided. Marginalized from livelihoods opportunities, structural and transportation barriers, inaccessibility within the workplace along with harassment and sexual abuse restrict them further. There is need for time bound amendment of all the work, employment, labour related laws, policies and schemes to ensure inclusion

Violence including forced sterilization and abortion continues. Structurally the Courts, the Human Rights Commissions and Women's Commissions are not responsive. Laws on violence either do not include women with disabilities such as Domestic Violence Act 2005 or are not implemented e.g. on Rape and POCSO for girls with disabilities. With little access to reproductive health care and abuse even within the health care settings add to the health hazards they face..

Suggested Recommendations

- Enquire into the human rights violations against women with disabilities in India and adopt measures to address gendered discriminations and violence including inclusive laws and data sets
- The state should also frame rules for strict penal action for elimination of harmful practices such as forced sterilization, forced abortion, forced hysterectomy, forced contraception and "two finger tests"
- Direct the National and State Women's and Human Rights Commissions take up their issues including support in accessing the legal justice system
- Provide access to education, health services, work and employment, and social security
- Ensure that the new policies being drafted (eg education) include their issues
- To amend all the work, employment, labour related laws including the Prevention of Sexual Harassment at Workplace Act 2013; policies and schemes to include of women with disabilities as a part of the work /labour force at all sectors – public, private, organized or unorganized
- Accessible Toilets in educational institutions and work places must be a priority

SUBMITTING ORGANIZATION

This submission is being made by the Women with Disabilities India Network, a national coalition of women with disabilities activists, academics and organizations in India, who are jointly submitting this report. The Network has made submissions in response to India in 2014 to the CEDAW Committee and in 2016 to Universal Periodical Review.

For the UNRCPD Alternate Report 441 women were consulted in all States of India from both urban and rural areas in 2017-2018 including all the 21 disabilities identified by the State. In response to the Alternate Report submission a presentation was made to the Committee during the 11th pre-session in April 2019 by the Network. The LOIs were then received and this report is being submitted as no action has been taken in this period.

The Network was expanded post pre-session meeting and a national consultation organized by the Network to discuss the Alternate Report and response to LOIs was organized in Chennai. The Network was joined by other women's organizations, DPOs and activists with CREA taking a lead part in assisting in writing the report.

This report is being presented by a larger group joining the Women with Disabilities India Network in response to the LOIs. The new organizations (Annexure 1) provided detailed inputs in the writing of the report. Major input was provided by the following:

Support Organisations

- Anjali MHRO, Kolkata
- AWWD Kolkata
- CREA Delhi
- Equals CPSJ Chennai
- Rising Flame, Mumbai
- Shanta Memorial Rehabilitation Center (SMRC), Orissa

Individuals

- Jeeja Ghosh Independent Researcher and Activist
- Nandini Ghosh, Faculty IDSK
- Renu Adlakha Centre for Women and Development Studies New Delhi
- Sandhya Limaye TISS Mumbai

INTRODUCTION

In April 2019, the Women with Disabilities India Network submitted the Alternate Report on Article 6 of UNCRPD. Since then no changes have taken place in regard to the report.

List of issues in relation to the initial report of India¹

A. Purpose and general obligations (arts. 1-4)

In response to LOI 3

The major strategies for realisation of rights of persons with disabilities in India are programmes and schemes for empowerment and social protection. There are *many programmes for access to entitlements* for persons with disabilities listed mainly by the Ministry of Social Justice and Empowerment (MSJE) Government of India. However there is *little or no budgetary allocation* made for women with disabilities. A consolidated sum for the disability sector is allocated. In education, employment and development programmes there are sector wise allocations for disabled people.

Schemes:

- Economic Rights
 - MGNREGA, guarantees right to food through livelihood to rural population including persons with disabilities. However, *during 2018-19 only 19% of them who registered actually worked*, due to poor working conditions², Implementers lack awareness on accommodations under MGNREGA for inclusion.³*Inclusion of persons with psychosocial disability and learning disabilities is disproportionately low* under the programme⁴. It does not help women with disabilities.
 - Mudra Loan scheme: boost livelihoods by extending affordable credit, without security or collateral, to allied agricultural activities, non-farm micro and small enterprises in manufacturing, trading and services. 134 million people availed of Mudra loans since its inception in 2015⁵. There is no disability disaggregated data of usage and access, and no focus on ensuring such loans for women with disabilities the poorest of the poor.
 - The National Handicapped Finance Development Corporation gives loans to persons with disabilities for livelihood programmes. In 2017-18, out of 7785 disabled

¹ As adopted during the eleventh pre-sessional working group of the Committee (10th-11th April 2019)

²Ministry of Rural Development (2019) 'No.of disabled persons and person days for the financial year 2018-19'. Accessed on 03.01.2019 at http://mnregaweb4.nic.in/netnrega/state_html/stdisabled.aspx?lflag=eng&fin_year=2018-2019&source=national & labels=labels & Digest=2sK2jsi9G7FHeqD/Cv4G1Q -

³National Institute of Rural Development (2014) 'MGNREGA – Comprehensive modules' Ministry of Rural Development. Accessed on 03.01.2019 at http://nrega.nic.in/Circular_Archive/archive/Comprehensive_Module.pdf

⁴'Draft Socio-Economic Impact of Mahatma Gandhi National Rural Employment Act 2005' Infra.

⁵<http://www.newindianexpress.com/nation/2018/oct/22/over-90-beneficiaries-under-pmmy-scheme-got-loans-less-than-rs-50000-1888279.html>

beneficiaries who received loans for their small business, only around 700 women benefitted⁶.

- Health and reproductive rights
 - **The Janani Suraksha Yojana (JSY)** contributes to ending violence against women and fulfil SDG Goal 5 – Gender Equality⁷. However it provides no data on inclusion of women with disabilities
 - **Ayushman Bharat** or the National Health Protection scheme for families living below the poverty line and /or are socially or economically backward, covers nearly 40% of the population among the poorest and the vulnerable, does not mention disability and provides no disaggregated data⁸.
 - **Swach Bharat Abhiyan (2014)** to achieve universal sanitation coverage in India the programme lists that 9,61,28,566 household toilets have been built⁹. No concerted efforts to include women with disabilities have been made. In a review of the scheme, it has been suggested that unisex toilets¹⁰ should be built for disabled people in each block covered by the scheme, overlooking women’s cultural stand on separate toilets in rural India.
- **Accessible India Campaign (AIC)**¹¹, a flagship campaign of the Department of Empowerment of Persons with Disabilities (DEPwD), aims to make a barrier free and conducive environment for disabled. Access Audit of 1662 State Government buildings in 48 cities was completed, access compliance proposals received for only 647 buildings¹². Only 231 websites of Central and State Government websites have been made accessible by March 2017. There is no *data* available regarding the usage and access of programmes under the schemes by women with disabilities.

B. Specific rights (arts. 5-30)

Women with disabilities (art. 6)

In response to LOI 6 (a)

There are few general gender based policies and laws that mainstream rights of women with disabilities in India. There is even less disaggregated data to confirm that policies have been implemented for women with disabilities in the areas of education, health, work and employment. India reports that 2.41 percent of males and 2.01 percent of females live with disabilities.¹³ The discrepancy between Indian and international estimates can be attributed to discordant definitions of disability, lack of awareness and stigma—especially for women and girls—which leads to under-reporting.¹⁴ There is exclusion of women with disabilities from other government data sources, (WHO World Report on Disability

⁶http://www.nhfdc.nic.in/writereaddata/nhfdc/2017_2018.pdf

⁷ <http://in.one.un.org/page/sustainable-development-goals/sdg-5/>

⁸<https://www.pmjay.gov.in/>

⁹<http://swachhbharatmission.gov.in/sbmcms/index.htm>

¹⁰<https://economictimes.indiatimes.com/news/politics-and-nation/build-unisex-toilets-for-the-disabled-pm-narendra-modi/articleshow/60931363.cms?from=mdr>

¹¹ <http://pib.nic.in/newsite/printrelease.aspx?relid=159009>

¹² http://disabilityaffairs.gov.in/content/accessible_india.php

¹³ Office of the Registrar General & Census Commissioner, India, “Presentation on Disability, Census of India 2011: Data on Disability,” December 27, 2013, <http://censusindia.gov.in/> (accessed January 6, 2017).

¹⁴ Sachin P. Mampatta, “India’s missing disabled population,” *livemint*, September 16, 2015, <http://www.livemint.com/Opinion/1rx8tSYGwHB0ZRsvdNFiBP/Indias-missing-disabled-population.html> (accessed July 3, 2016).

2011)(Annexure 1 Note 1). The National Family Health Survey (NFHS) and the National Crime Records Bureau (NCRB) do not include disaggregated data for women with disabilities. In 2014, the UN Special Rapporteur on violence against women, Rashida Manjoo recommended disaggregated data collection on not only disabilities, but also sex, age, caste, religion, language and other relevant criteria.¹⁵

In response to LOI 6 (b)

The draft National Policy for Women 2016 highlights specific groups of vulnerable women but does not mention the concerns of women with disabilities except as caregivers. The Policy mentions single women, but ignores disabled women most of whom are single due to stigma which that affects their “marriageability.”

The Gender Budgeting Handbook (2015) by the Ministry of Women and Child Development¹⁶ mentions disability only in relation to sports and pensions. A report by Equals Chennai finds that existing programs that consider explicitly women with disabilities dedicate only slightly above 40% of their budgets for them¹⁷.

The Prevention of Women from Domestic Violence Act 2005 does not recognise disabled women as a relevant category requiring targeted action. In a study conducted in 2012-2016 on use of the PWDVA in West Bengal, it has been seen that less than 0.5% of disabled women have ever used the law due to lack of access to legal information in accessible formats and the inaccessibility of the mechanisms¹⁸.

The Annual Report of the National Human Rights Commission 2016-17¹⁹ provides no specific recommendation in terms of support to be extended to women with disabilities.

In response to LOI 6 (c)

The National Commission for Women does not collect any data specifically on women with disabilities so no information on assistance to them is available²⁰.

Consultations with DPO leaders clearly revealed the intersectional discrimination faced by women with disabilities from Caste based (Dalit communities) who are not allowed to access government spaces and hence are denied their right to access the entitlements and rights made available for them through state mechanisms²¹.

Children with disabilities (art. 7) and Education (art.24)

In response to LOI 7 (a, b, c) and LOI 24 (b)

¹⁵UN Human Rights Council, “Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo,” April 1, 2014, A/HRC/26/38/Add.1.

¹⁶ www.wcd.nic.in

¹⁷ CSW Equals presentation 2019, personal communication

¹⁸ Institute of Development Studies Kolkata 2018 Unpublished research report

¹⁹http://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2016-2017.pdf

²⁰Mahima Nayar 2016 in Kannabiran Kalpana and Asha Hans Social Development Report India: Perspective on Disability. OUP.

²¹Consultation in Chennai June 2019.

Enrolment of children with disabilities remains poor, with only 1.16% children with disabilities enrolled in 2015-16, of which 0.42% are girls with disabilities. 41% girls with disabilities were enrolled in primary level (class I to V) whereas 43% were in secondary level (class VI-VIII)²². There is lack of coordination between mainstream schools, integrated, inclusive schools and special schools offering education to disabled children.

During a series of consultation by this network (2018-2019 in 20 States)²³ women participants from rural areas, reported the complete lack of support for girls with deaf blindness, autism spectrum disorder, intellectual disabilities and multiple disabilities and receive no support for health, habilitation, rehabilitation and education due to lack of awareness. Dalit children face double discrimination. Girls with disabilities often drop out from schools because of lack of accessible toilets or accessible menstrual management facilities. Many parents also disallow girls to attend schools because they are more vulnerable to abuse in the inaccessible transport systems to reach schools. No information on new disabilities included by law (21).

Equal recognition before the law (art. 12)

In response to LOI 12 (b)

Despite the adoption of the Mental Health Care Act, 2017, there is clear denial of legal capacity of women with psychosocial disabilities, evident from forced admissions and limited access to justice in institutions. The Mental Health Review Board and the State Mental Health Authority are not constituted. Psychiatric institutions remain the chief custodians of the people with psychosocial disabilities, forcing medication, suspending legal capacity. Section 86 of the Mental Health Care Act stipulates that a person can be institutionalised if they are not able to comprehend the full implications of their decisions. Such a clause is used most against women with psychosocial and intellectual disabilities and is in direct violation of legal capacity. Access to recourse under new legal provisions comes with patriarchal ideas of guardianship and legal capacity. (Annexure 1 Note2). The Legal Aid Services Authority has not been carrying out awareness on equal recognition of law.

Access to justice (art. 13)

In response to LOI 13 (a)

Besides the Court buildings and police stations not being accessible²⁴, women with disabilities have not benefited from the changes addressing specific needs of women and girls with disabilities in the

²² Arun Mehta, Elementary Education In India, U-DISE, analytical tables 2015-16

²³ Consultation in Chennai June 2019.

²⁴ Supreme Court slams govt for not making public institutions disabled-friendly, <https://timesofindia.indiatimes.com/india/supreme-court-slams-govt-for-not-making-public-institutions-disabled-friendly/articleshow/65131469.cms>, Disability rights get a judicial boost <http://www.newindianexpress.com/opinions/2018/jan/01/disability-rights-get-a-judicial-boost-1741367.html>, Supreme Court Directs Important Steps Forward In Accessibility For Persons With Disabilities in Public Places, <https://hrln.org/supreme-court-directs-important-steps-forward-in-accessibility-for-persons-with-disabilities-in-public-places/>, The Supreme Court – and a New Legislation – Are Bringing Fresh Signs of Hope for India's Disabled, <https://www.thebetterindia.com/77077/india-disabled-access-deserve-sugamya-bharat-abhiyan/>

Criminal Law Amendment Act 2013, amendment to the Indian Evidence Act and POCSO 2012²⁵. The testimonies of women with intellectual and psychosocial disability are questioned by the justice system in India²⁶.

The National Legal Services Authority (NALSA)²⁷, organised more than 1000 programs on Awareness / Legal literacy on various topics useful for women (2015-2016), but they were not conducted in multiple accessible formats, thus leaving women with disabilities out. In the year 2017-18 NALSA mentioned providing legal support to 6420 marginalized persons with disabilities but there is no disaggregated data by gender or type of disability²⁸.

In response to LOI 13 (b)

In cases of sexual violence, women with disabilities face multiple attitudinal barriers which question their credibility of testifying on the basis of their disability (Annexure 1 Note 4). An examination of judgments from India's appellate courts illustrates a systematic disregard for and devaluation of their testimonies. This devaluation is embedded in evidentiary standards that define competency to testify and govern testimony of witnesses who are unable to speak.²⁹ This also extends to women with psychosocial and intellectual disabilities as being unreliable or incapable to express facts.

Attitudinal and physical barriers affect the rights of women with disabilities to make reproductive decisions, also violating CRPD Article 23 (Annexure 1 Note 5). It is also contradictory to the rights of supported decision making and right to family and right to reproductive choices enshrined in the CRPD.

Freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15)

In response to LOI 15

Despite international norms and Indian laws that warn against the use of invasive examination techniques, the “finger test”— a clinical procedure that involves the insertion of two fingers to diagnose medical conditions of the uterus or urinary tract—persists (Annexure 1 Note 6).

Freedom from exploitation, violence and abuse (art. 16)

In response to LOI 16 (a)

²⁵Criminal Law (Amendment) Act, 2013, [https://www.advocatekhaj.com/library/bareacts/criminalawamendment/index.php?Title=Criminal%20Law%20\(Amendment\)%20Act,%202013](https://www.advocatekhaj.com/library/bareacts/criminalawamendment/index.php?Title=Criminal%20Law%20(Amendment)%20Act,%202013), Indian Evidence Act, 1872<https://www.advocatekhaj.com/library/bareacts/indianevidence/119.php?Title=Indian%20Evidence%20Act,%201872&STitle=Dumb%20witnesses,POCSOhttps://wcd.nic.in/sites/default/files/childprotection31072012.pdf>, Govt introduces amendments to POCSO Act in Lok Sabha<https://economictimes.indiatimes.com/news/politics-and-nation/govt-introduces-amendments-to-pocso-act-in-lok-sabha/articleshow/67436638.cms?from=mdr>

²⁶ Data collected during consultation with women with disabilities Chennai April 2019

²⁷https://nalsa.gov.in/sites/default/files/document/Annual_Report%202015-16.pdf

²⁸<https://nalsa.gov.in/content/legal-service-beneficiaries-april-2017-june-2017-0>

²⁹SaptarshiMandal, “The Burden of Intelligibility: Disabled Women’s Testimony in Rape Trials,” *Indian Journal of Gender Studies*, 2013, vol. 20, no. 1, pp. 1–29.

A study (2011), found that 21 percent of the 314 women with disabilities surveyed experienced emotional, physical or sexual violence from someone other than their intimate partner.³⁰ A recent study by in 2018 found 92% women with disabilities facing violence³¹.

According to Guidelines and Protocols for Medico-Legal Care for Victims/Survivors of Sexual Violence 2014 issued by India's Ministry of Health and Family Welfare, women and girls with disabilities are three times more likely to be victims of sexual violence as compared to other women and girls.

Yet the government has no strategies and mechanisms to respond to their particular needs. A 2014 report by the UN Special Rapporteur on violence against women, Rashida Manjoo, lack of disaggregated data collection on disabilities in India rendered the violence committed against women with disabilities invisible.

In response to LOI 16 (c)

Data is missing on girls with disabilities and offenses committed against them particularly those of sexual nature. Government of India's only study in 2007 did not collect data disaggregated by gender and disability³². India passed the POCSO Act in 2012 with access to justice provisions for children with disabilities, but there is a documented major implementation gap.

Human Rights Watch report 2018 outlines a few sexual violence cases against girls with disabilities and their barriers in accessing justice³³. From cases of denial of justice in rape cases through delay, to rejection of testimony to testimonies of girls with severe mental disability, access to justice has been based on mainstream standards, devoid of any semblance of reasonable accommodation (Annexure Note 7).

Protecting the integrity of the person (art. 17)

In response to LOI 17

In India, cultural attitudes towards sexuality and disability affect lives of women with disabilities significantly and often results in submission to family choices³⁴, when disabled women are forced into unauthorised sterilisation, and denial of motherhood on the basis of the 'incapacity of the mother' as cited in the Sucheta case. These practices limit the ability to have children and become traumatic violations of their bodily integrity. As per the 2002 amendments of Medical Termination of Pregnancy Act 1971, guardians can consent to abortions for women with psychosocial disabilities. The Supreme Court of India in 2009 given the chance did not strike down the relevant provisions of the Medical

³⁰ CREA, "Count Me In! Violence Against Disabled, Lesbian, and Sex-working Women in Bangladesh, India, and Nepal," 2011, <http://www.creaworld.org/sites/default/files/The%20Count%20Me%20In%21%20Research%20Report.pdf> (accessed July 3, 2016). Figures on the prevalence of violence against women with disabilities reflect qualitative and quantitative surveys conducted with women with disabilities. Researchers contacted 432 women with disabilities and 317 participated in the study. Of the 317 respondents, 243 lived in Mumbai, 72 in adjacent Thane and 2 in Navi Mumbai.

³¹ www.smrcorissa.org

³² MSJE Annual Report 2016-17, Chapter 13, National Commission for protection of Child Rights (NCPCR), Page 167 – 182, https://wcd.nic.in/sites/default/files/FINAL%20WCD_AR_English%202016-17.pdf

³³ <https://www.hrw.org/world-report/2019/country-chapters/india#1aadcc>

³⁴ <https://www.opendemocracy.net/en/5050/sexual-rights-disability-indian-women/>

Termination of Pregnancy Act, 1971³⁵. In 2006, the Ministry of Health issued guidelines for the sterilization of men and women in India, where it states, “for sterilization to be performed, women must be “of sound state of mind to understand the full implications of sterilization,” and women with psychosocial disabilities “must be certified by a psychiatrist, and a statement should be given by the legal guardian/spouse regarding the soundness of the client’s state of mind.” Women and girls with disabilities can be sterilized without their consent with only the consent of a guardian or parent³⁶. The RPD Act 2016 also supports this in Section 92(f) which states that no pregnancy of a woman with disability can be terminated without her consent, except in cases of severe disabilities.

Denial of reproductive health services, or abuses in maternal health care are often faced by women, but —particularly women with intellectual or psychosocial disabilities—are disproportionately subjected to practices such as forced sterilization, contraception, and abortion(Annexure1 Note 8). Therefore, reproductive autonomy for disabled women is legally ‘handed over’ to parents or legal guardians, and enforced through the use of contraceptive pills, like DEPRO-V. Forced sterilization also occurs in order to ‘better manage’ menstruation and personal hygiene (Annexure Note 9). Adolescent girls with disabilities often cannot comprehend their menstruation cycles, which often cause parents to be violent toward their children until they learn how to manage themselves³⁷.

Respect for home and the family (art. 23)

In response to LOI 23

Section 57 of the Juvenile Justice (Care and Protection of Children) Act 2015 specifies under its CARA guidelines eligibility criteria for prospective adoptive parents. Although disability is not mentioned as a ground of ineligibility, many cases reveal that adoption agencies have refused disabled mothers or parents from adopting a child (Annexure1 Note 10).

Health (art. 25)

In response to LOI 25 (b)

The major general health schemes (highlighted in the response to LOI 1-4) have no specific provisions which help women with disabilities in accessing them. The larger NRHM programmes do not include women and girls with disabilities. Chapter 4 of the Annual Report of the Ministry of Health & Family Welfare 2013-14³⁸, does not give any information about specific measures taken to make maternal health care accessible for women and girls with disabilities revealing the cultural discrimination against women with disabilities, who are seen as unfit to be mothers.

For women with disabilities, accessing hospitals and health services is particularly problematic, as these are inaccessible, or their families do not have the time or resources to take them. Women with disabilities face physical and sexual abuse within the health care settings, with people in positions of

³⁵UN Special Rapporteur on Violence against Women, *Report of the Special Rapporteur on violence against women, its causes and consequences*, paras. 28 & 36, U.N. Doc. A/67/227 (2012)

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

³⁷*Avantika Bunga and Tia Matthew 2019* Of Stigma and Sterilization: The Layered Stigmatization of Women With Disabilities in India <https://thebastion.co.in/politics-and/education/of-stigma-and-sterilization-the-layered-stigmatization-of-women-with-disabilities-in-india/>

³⁸<https://mohfw.gov.in/sites/default/files/Chapter415.pdf>

power, within families, in hospitals and rehabilitation units who take decisions on their behalf and abuse in manifold ways (Annexure 1 Note11).

India's Ministry of Health and Family Welfare has issued Guidelines and Protocols for Medico-Legal Care for Victims/Survivors of Sexual Violence, including guidelines for medical examination of women and girls with disabilities provide necessary accommodations, including making arrangements for interpreters or special educators; and ensure that they take consent and medical histories directly from survivors. To date, however, only 9 out of 29 states have adopted these Ministry guidelines.

Women with disabilities living with HIV face multiple forms of discrimination and HIV testing centres do not follow universal design in its infrastructure and services. (Annexure Note 12). In case they reach the health providers, there are no interpreters to work with them and most counsellors are not aware of intersectional issues.

Work and employment (art. 27)

In response to LOI 27 (b)

In the new gender sensitive law Prevention of Sexual Harassment at the Workplace 2013 and its amendment, protection is provided to women against sexual harassment at all the work places including places visited by the employee during the course of employment including transportation. But there are no specific provisions for women with disabilities and the manner in which they can seek redress under the law.

C. Specific obligations (arts. 31-33)

Statistics and data collection (art. 31)

The response to the LOIs has highlighted the lack of proper data, disaggregated by gender and disability that enable one to make a proper assessment of the status of women with disabilities, their access to rights and to measures that enable them to address violations and infringements of their rights.

Recommendations

1. Adopt comprehensive anti-discrimination legislation that prohibits discrimination on all grounds of gender and disability as found in different clauses of various legal documents like "mental retardation" (NTA); "mentally ill" (MHCA)(Articles 1-5).
2. Take proactive measures to include WWDs in all programmes, policies and schemes implemented to promote empowerment of women with disabilities. There must be specific budgetary allocation across all Ministries, to address the multiple and intersecting forms of discriminations faced and focussed action plans (Arts. 6 & 8).
3. Ensure the inclusion of women with disabilities in the gender budgeting process and provision of adequate funding by introducing specific gender budgeting within the DePWD and in the overall budgeting of the Ministry of Women and Child Development at National and State levels (Articles 1-5).
4. Strengthen awareness-raising efforts, targeting women with disabilities and their families, with the involvement of civil society, institutions and community leaders, to eliminate stigma and

- discrimination, and to promote media representation of a positive, non-stereotypical and non-discriminatory portrayal of women with disabilities (Arts. 6 &8).
5. Ensure that the Draft National Education Policy 2019 addresses issues of drop out of girls with disabilities, by providing not only financial support but also an accessible and non-discriminatory atmosphere, through provision of transport, accessible toilets etc. (Arts. 7 & 24).
 6. Ensure inclusion of women with disabilities specifically under the National Rural Health Mission and Rashtriya Swasthya Bima Yojana, covering both health and rehabilitation requirements. The state should also frame rules for strict penal action for elimination of practices such as forced sterilization, forced abortion, forced hysterectomy and forced contraception (Art. 25).
 7. Ensure use of Health Ministry Guidelines 2014 on the use of the “finger test” and its variants from all forensic examinations of female survivors
 8. Bring changes to the Sexual Harassment at the Workplace Act to include the specific concerns of women with disabilities as well as including accessible redress mechanisms. (Art. 27).
 9. Direct National Commission of Women and State Commissions of Women to take up issues of human rights violations of women with disabilities on an immediate and urgent basis including support in accessing the legal justice system (Arts. 15-17).
 10. Ensure that National Family Health Survey and National Crime Record Bureau of India include data of women with disabilities including women with psycho-social disabilities which gives a clear picture in formulating strategies and mechanisms to combat violence and crimes and address their particular needs (Art.16)
 11. Ensure data, disaggregated by type of disability and gender, is collected and disseminated on a regular basis by the various Governments to highlight the status of women and girls with disabilities in terms of access to education, health services, work and employment, and social security, to enable an estimation of violations and infringements of the rights of women with disabilities (Arts. 5-8, 15-17, 24-25, 27, 31).
 12. Create special cell both in National and State Commission for Women to address the specific needs along with promotion and protection of the rights of women with disabilities (Arts. 6, 8 & 33).
 13. We also urge the Committee to look into the non-compliance of the CEDAW concluding observations to India (2014) and its commitments under various national laws. We also communicated our issues to the Universal Periodic Reporting 2016.³⁹

³⁹Convention on the Elimination Of All Forms of Discrimination Against Women CEDAW/C/IND/CO/4-5Committee on the Elimination of Discrimination against Women Concluding observations on the combined fourth and fifth Periodic reports of India https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=79

Annexure – I

The WHO World Report on Disability, 2011, details the challenges associated with national census and survey based approaches to measuring disability and provides detailed guidelines on how to improve census outcomes. “Censuses cover entire populations, occur at long intervals, and by their nature can incorporate only a few disability-relevant questions. While considerable socioeconomic data, such as employment rates and marital status, are available from censuses, they can provide only limited information about participation.” The report also highlights the potential of surveys if used well: “Surveys have the possibility of providing richer information through more comprehensive questions including on institutionalized populations. [F]or example, survey questions identify people with disabilities for impairments in body function and structure, but also increasingly for activities, participation, and environmental factors. Some surveys also provide information on the origins of impairments, the degree of assistance provided, service accessibility, and unmet needs.”

Nilima, a woman with psycho-social disability, was working as a housemaid in Delhi. In 2015 she went to the market place, forgot the address of the house she worked in, and was then admitted to a mental hospital. She was raped by some male staff at the hospital for a number of days. When she got out, she lodged a FIR against six men. After few months she was summoned by DLSA, Gurugram, to receive compensation for her impending sexual assault case on 18th December, 2018. Nilima had to describe the incident of her sexual assault in details. After hearing her case, DLSA announced that she would receive compensation but have to produce bank account details by the 8th of February 2019. When these requirements were met, DLSA informed that Nilima would require the presence of a guardian in order to claim the amount of compensation since she is residing at a mental health institution. Hence, the Superintendent of Navkiran home has applied for her guardianship. Meanwhile, as per Government norms, Nilima will also require a family member to get her discharged from the Navkiran home. Her father had been communicated this piece of information but he lives far away in her native village. Hence Nilima is left in no mans’ land, forced to remain in the institution and denied access to the compensation due to her psychosocial disability.

Meera, a 38-year-old woman with cerebral palsy leading to developmental delays, regressed from a communication level of 11-years-old to 3-years old after she was raped. Meera testified in court, with the assistance of a special educator. The magistrate, however, refused to accept her testimony on the grounds that she did not use adult language.

UN Committee on the Rights of Persons with Disabilities, General Comment No. 3, Article 6: Women and girls with disabilities, U.N. Doc CRPD/C/GC/3 (2016), para 52, stating:

Women with disabilities face barriers to accessing justice including with regard to exploitation, violence and abuse, due to harmful stereotypes, discrimination and lack of procedural and reasonable accommodations, which can lead to their credibility being doubted and their accusations being dismissed. Procedures or enforcement attitudes may intimidate victims or discourage them from pursuing justice. These can include: complicated or degrading reporting procedures; referral of victims to social services rather than legal remedies; dismissive attitudes by police or other enforcement agencies. This can lead to impunity and invisibility of the issue, resulting in violence lasting for extended periods of time. Women with disabilities may also fear reporting violence, exploitation or abuse because they are concerned they may lose their support requirements from caregivers.

In Suchita Srivastava case 2009, the state in India appealed for termination of pregnancy for a 19 year old woman with intellectual disability living in a state welfare institution, who became pregnant after being sexually violated within the institution premises. The state felt that the woman was not competent to comprehend the implications of pregnancy or to handle the responsibilities of motherhood. The Medical Termination of Pregnancy (MTP) Act, 1971 mandates that the consent by a woman who has attained adulthood and is not a person with “mental illness” is essential before performing abortion. Supreme Court of India arbitrated in support of freedom of self-determination and choice, right to privacy as well the right to live with dignity for persons with disabilities. The Supreme Court also looked at the distinction between “mental illness” and “mental retardation” (intellectual disability) going by the statute laid down by the MTP Act. In the opinion of the Supreme Court in this case the State must respect the personal autonomy of the women with intellectual disability with regards her decision of termination of pregnancy. The Supreme Court however by debating the difference between ‘mental retardation’ and ‘mental illness’ has further discriminated within different women with disabilities and their reproductive rights. It is also contradictory to the rights of supported decision making and right to family and right to reproductive choices enshrined in the CRPD.

Four men gang raped Lakshmi, a 16-year-old girl with hearing and speech disability. The finger test was conducted on Lakshmi more than three times. The Chairperson of the Child Welfare Committee in a district in Tamil Nadu, explained that evidence from the finger test was ultimately used to confirm that Lakshmi had been raped.

Cases from Human Rights Watch - In June 2013, Chandra, a 12-year-old girl with severe cerebral palsy—resulting in an intellectual disability and the inability to speak, sit, stand or walk independently—was kidnapped, raped and left profusely bleeding in a field near her house in West Bengal state. Due to her difficulty speaking or moving on her own, Chandra was unable to call for help or return home. Chandra was found after several hours, when some villagers saw her in the field. She died a few months later due to her health complications. 3 years after her rape, her family was still fighting for justice. In a case of sixteen-year-old girl with 60% mental retardation, a Special Court in Maharashtra refused to accept her statement which had been recorded with assistance from the Head Master with twenty two years’ work experience in special schools. Since she had spent only 1 year in the school, and signs of expression could not be learnt in such a short period, the Special Court held that it could not rely solely on her statement to convict the accused. In another case, the testimony of a seventeen-year-old girl with 80% “mental disability” was considered unreliable because she had not mentioned details of the abuse to the police and there were no injuries on her body or genitals. The judgment is silent on whether any special expert was engaged to facilitate the recording of the child’s testimony.

Access to sexual health related information

Case study 1- Parents of a 14 year old girl with autism stated that they did not want to expose their daughter to sex education as they felt it would dilute the impact of more important and relevant lessons like socially acceptable behaviour and personal hygiene. They felt that they would administer sex education only if they planned to get her married.

Case study 2– A teacher at a school for children with disabilities in Mumbai, stated that parents wanted to exclude their children from sex education sessions as they felt it could lead to experimentation. They feared the outcome of experimentation in terms of pregnancy in case of girls or incrimination due to sexual misconduct in case of boys. Some parents also felt that sex education

should be introduced only in context of marriage and thus completely skipped if marriage was not on the cards for the child.

Case Study 1- A 14 year old girl with autism was sterilised on the onset of her menstruation by her mother on the basis of the advice of family members. The mother stated that the daughter had tactile issues and would not allow use of sanitary pads as it irritated her skin. She mentioned incidents where the girl removed her sanitary napkin at school resulting in staining of clothes. The mother also believed that visible stains would notify people that the girl was mature and could increase the risk of sexual abuse.

Case Study 2- Mother of a 17 year old girl with autism stated that she wished to get her daughter sterilised to ensure her safety. The mother stated that the area they lived in was home to people involved in criminal activities. She feared sexual abuse that would result in unwanted pregnancy. Given the mental status of the child, the mother questioned her ability to report the incident and identify the perpetrator. Sterilisation in her opinion would mitigate the risk of unwanted pregnancies. Given their financial situation, they were unable to afford the surgery earlier but were in the process of accumulating funds for the same.

Case 3 - In Gujarat a family had a young blind daughter. The daughter was married to a non-disabled man. The father of the blind woman gave her contraceptive pills under the guise of giving her strength pills. He asked her to eat that pill everyday if she wanted a happy, satisfying married life. For a year the woman was trying with her husband to conceive a child. A year later when the husband noticed her eating the pill, he took the pill to the chemist to find out. Only then did they realise that the blind woman was given contraceptive pill without her consent under false pretences.

Case 1 - In 2018, a wheelchair user woman in New Delhi applied for adoption. Since her partner and she are both on wheelchairs the adoption agency rejected their application saying that they would not be fit parents.

Case 2 - In 2017 a blind woman based in Bangalore applied to adopt a child with her partner. When the agency was visiting, they invited the parents-in law to stay with them a couple of days. The agency was assured of the child's future when they saw and were told that the husband is nondisabled and the parents-in law will help and support the blind woman fully in raising her child. Only with these assurances her application was accepted.

Case 3 - One married woman with cerebral palsy who wanted to adopt a child had to face multiple hurdles during the process, involving multiple trips to convince the adoption committee that she could be a responsible caregiver, certificates from doctors to establish her capabilities. The prospective parents were subjected to humiliating treatment for a prolonged period before the decision to allow her to adopt was finally made⁴⁰.

Cases from <https://medium.com/skin-stories/what-to-expect-when-youre-expecting-and-happen-to-live-with-mental-health-issues-b8b19b2014d4>

Case1- a woman with a disability – a wheelchair user- mentioned in a training in 2016 that she has been abused by technicians while being transferred on the x-ray beds and back to her wheelchair.

Case 2 Because of social stigma that medical professionals carry, women with disabilities often rely on family members if at all for guidance on their reproductive and other health needs. In Gujarat a family had a young blind daughter, who got married to a non-disabled man. The father of the blind woman gave her contraceptive pills under the guise of giving her strength pills. He asked her to take the pill everyday if she wanted a happy, satisfying married life. A year later when the husband

⁴⁰<https://timesofindia.indiatimes.com/city/kolkata/jeeja-countrys-1st-adoptive-mom-with-cerebral-palsy/articleshow/64564628.cms>

noticed her eating the pill, he took the pill to the chemist to find out. Only then did they realise that the blind woman was given contraceptive pill without her consent under false pretences.

Case 3 Pregnancy of a woman with a disability is still fraught with stigma and discrimination. Medical professionals while providing reproductive health services carry this stigma forward. A woman living with psychosocial disability in Chennai conceived in 2016. She shared with her doctor her medical history around her psychosocial disability. The doctor was very astonished and very rudely asked the woman to not divulge to others that she was pregnant. According to her the psychiatric drugs could have side effects which could lead to foetal anomalies. She told the woman that at the tenth week when they find out, she will know if the foetus is healthy and if not then she could abort the foetus. Else if she told others before that and if the abortion would take place, she would have to explain to others what happened and why did it happen.

Case Study - In 2017, 2 women with disabilities from rural Karnataka shared in training that they have nowhere to go because they live with a disability and HIV both. Because of the stigma attached to HIV they cannot share their conditions with the disability circles and the HIV experts did not understand their disability. Besides they lived in villages where they did not have any support group or privileges of the city.

Annexure II List of Organisations

This report was led by Women with Disabilities India Network (WWDIN) and Allies, which include disability rights organisations and NGOs, women with disabilities led organisations, women's rights organisations and individual women with disabilities, activists and academicians. Please find listed below the list of leading organisations and individuals – since the data has been gathered from 20 states and over 500 women with disabilities.

Organisations:

- SMRC Odisha- Shanta Memorial Rehabilitation Center (SMRC), Orissa, is a leading voluntary organization working in the field of disability for the last two decades. They aim to develop a sustainable organization that responds to the rights of people with disabilities in India, particularly gendered and in the rural areas, through research, education and awareness.
- Association for Women with Disabilities (AWWD), Kolkata, India has been working for 20 years on empowerment and mainstreaming of women with disabilities, mainly in rural areas and also in urban slums. The focus is on sustainable change towards a life with dignity and self reliance of Women and Girls with Disabilities.
- Rising Flame Mumbai - Rising Flame is a not-for-profit organisation based in Mumbai that works for rights of persons with disabilities, particularly women and youth with disabilities. They aim at achieving social integration and access for all through capacity building and leadership, knowledge production, and advocacy and interventions.
- CREA Delhi - CREA is a feminist human rights organisation based in New Delhi, India. CREA advocates for positive social change through national and international fora, and provides training and learning opportunities to global activists and leaders through its Institutes.
- Anjali Mental Health Rights Organisation Kolkata- Anjali is a Kolkata based organisation, working towards making mental health institutions and systems inclusive, securing progressive mental health laws, policy and practice and tackling overall stigma around mental health.
- Equals CPSJ, Chennai- Equals Centre for Promotion of Social Justice is a DPO working on evidence based advocacy towards the full realization of rights of all persons with all disabilities.

Individuals

- Nandini Ghosh Kolkata is a published gender and disability researcher and academician at the Institute of Development Studies, Kolkata.
- Jeeja Ghosh Kolkata is a disability and gender rights activist from Kolkata who was the former head of advocacy at the Indian Institute of Cerebral Palsy.
- Renu Addlakha Delhi is a health social scientist with a doctoral degree in medical sociology. Her areas of specialisation include the sociology of medicine, mental illness and the psychiatric profession, anthropology of infectious diseases, bioethics and disability studies.
- Sandhya Limaye Mumbai is an Associate Professor at the Centre for Disability Studies and Action in the School of Social Work at Tata Institute of Social Sciences, Mumbai. She has also been a Fulbright Fellow at University of Buffalo.

ANNEXURE – III

Details of LOIs that have been responded in this submission

A. Purpose and general obligations (arts. 1-4)

8. Please inform about measures taken to adopt the human rights model of disability across legislation, policies, and practices, including in relation to assessment criteria and certification of disability, and measures to abolish the use of derogatory terminology in legislation, such as '*divyangjan*' (persons with divine organs) and 'mental retardation' to refer to persons with disabilities, particularly in the Mental Health Care Act 2017.
9. Please inform about progress in harmonizing disability-specific legislation, to comply with the Convention. Please inform whether the Constitution prohibits discrimination based on disability.
10. Please report on the main strategies and policies for the realization of rights of persons with disabilities, particularly those living in rural areas, their timeframes, goals, human, technical and financial resources allocated, and progress achieved to implement them.
11. Please inform about mechanisms, at all levels, to carry out consultations, and ensure the full and effective participation of persons with disabilities, including children with disabilities, through their representative organizations in processes for implementing and monitoring the Convention, and in relation to laws, policies, programs and activities affecting their lives.

C. Specific rights (arts. 5-30)

Women with disabilities (art. 6)

6. Please inform the Committee about:
 - (a) General gender-based policies mainstreaming the rights of women and girls with disabilities, and specific legislation, policies and administrative measures for realizing the rights of women and girls with disabilities. Please provide statistical data disaggregated by age, sex and rural and urban area about progress achieved for women and girls with disabilities, in the areas of education, health, work and employment, and in social, economic, cultural and political fields;
 - (b) Measures to mainstream the rights of women and girls with disabilities across all sectors and levels of government, and budget allocations for the promotion and empowerment of women and girls with disabilities. Please indicate the human, technical and financial resources of the Ministry of Women and Child Welfare to undertake activities concerning women and girls with disabilities;
 - (c) Participation of women with disabilities in the National Commission for Women and State Women Commissions, and indicate the number of investigations concerning the rights of women and girls with disabilities and redress provided to them. Please report about information provided to women and girls with disabilities in accessible formats concerning complaint procedures available.

Children with disabilities (art. 7)

7. Please provide information on:
 - (a) Existing general policies that mainstream the rights of children with disabilities, including in the area of early development, education and social protection;

(b) Progress achieved to protect the rights of children with disabilities particularly in rural areas and abandoned children, and to ensure their inclusion in community life;

(c) Available mechanisms of support for children with disabilities, including children with hearing impairments, deaf-blind children and children requiring high levels of support.

Equal recognition before the law (art. 12)

12. Please inform about measures to:

(a) Repeal incapacity and custody laws and abolish all forms of guardianship, and to establish supported decision-making mechanisms for persons with disabilities;

(b) Raise awareness about the right to legal capacity of persons with disabilities and supported decision-making, particularly targeting persons with disabilities, their parents and relatives, judicial officials, policy makers, and financial services providers.

Access to justice (art. 13)

13. Please provide information about:

(a) Existing procedural, age-appropriate, and gender-sensitive accommodation for persons with disabilities, as well as accessibility of the physical environment, and information throughout the justice system;

(b) Measures to identify and address attitudinal and physical barriers preventing women with disabilities' access to justice, particularly in cases of gender-based violence against them;

(c) Coverage of free legal aid for persons with disabilities in all areas of law.

Freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15)

15. Please provide information on measures to ensure persons with disabilities are free from all practices of coercion, physical and chemical restraints, including shackling, forced electroconvulsive therapy, forced medication, humiliation and degrading treatment in institutions, including children's homes, rehabilitation centers, and psychiatric hospitals as well as the continued practice of virginity tests in prosecutions of rape. Please inform on concrete steps taken to ratify the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46 of 10 December 1984) and its Optional Protocol.

Freedom from exploitation, violence and abuse (art. 16)

16. Please inform about:

(a) Measures to identify, prevent and combat all forms of violence against persons with disabilities, including physical, psychological, sexual violence, the rape, abuse, exploitation by begging, trafficking, , kidnapping, abandonment, corporal punishment in all settings, including in the home, school, and institutions;

(b) Measures to ensure that legislation on gender-based violence, including the Domestic Violence Act of 2005 is applicable to women and girls with disabilities, and measures to collect disaggregated data on cases of gender-based violence against women and girls with disabilities, including violence inflicted by intimate partners. Please include statistics on gender-based violence against women with disabilities by the National Crime Records Bureau;

(c) Data, according to the provision of the Juvenile Justice (Care and Protection of Children) Act 2015, on cases of offenses committed against children with disabilities, including for those in institutions, and whether perpetrators have been brought to justice;

(d) Independent monitoring of facilities and programmes in line with article 16 (3) of the Convention and how civil society organizations, including organizations of persons with disabilities, are involved in monitoring institutional settings.

Protecting the integrity of the person (art. 17)

17. Please provide information on measures adopted to prohibit and prevent forced sterilization, forced hysterectomies and forced abortion, including because of third party's consent. Please report about measures to abolish harmful practices, including dowry schemes forced marriage of women with disabilities, and practices of so-called magic and exorcism on women with psychosocial disabilities.

Respect for home and the family (art. 23)

23. Please update the Committee about amendments made to the religious personal laws restricting the right to marriage of persons with disabilities on the basis of impairment, and divorce laws that provide for seeking divorce on the grounds of disability, including leprosy. Please indicate how the State party ensures the right of persons with disabilities to adopt children on an equal basis with others, in the context of the Adoption Regulation Act 2017. Please further inform on measures to prevent the abandonment of children with disabilities in cradle baby reception centres.

Education (art. 24)

24. Please inform about:

(a) Strategies, with specific timeframe, and budget allocation, to effectively implement inclusive education across the State party;

(b) Number and proportion of students with disabilities in comparison with the overall student population who are enrolled in mainstream inclusive educational settings in primary, secondary and tertiary education with individualized support, and measures taken to address the high rate of school dropout and the low rate of literacy among persons with disabilities, particularly persons belonging to minority groups, scheduled castes and scheduled tribes, women and girls with disabilities, and children with intellectual disabilities;

(c) Strategies and budget allocations to establish inclusive and accessible schools, train teachers and personnel working in educational institutions on inclusive methodologies, and provide accessible teaching materials, means and modes of communication.

Health (art. 25)

25. Please provide information on:

(a) Persons with disabilities entitled to the health plans, insurance, and services in the public health system including the Swavlamban National Health Insurance Scheme 2015;

(b) Access of women and girls with disabilities to health services, including sexual and reproductive health in their own communities, particularly in rural and remote areas;

(c) Whether and how disability-related healthcare services are covered and made available and accessible to persons with disabilities, including for persons affected by leprosy;

(d) Human resource development programs in the health sector organized by different ministries and how disability inclusion is made an integral part.

Work and employment (art. 27)

27. Please provide information about measures taken to:

- (a) Increase the number of persons with disabilities in the open labour market through replacing sheltered employment, providing reasonable accommodation and individualized support at work;
- (b) Protect women with disabilities from sexual harassment at the work place and ensure accessibility of safe hostels for women working away from home;
- (c) Ensure that the Mahatma Gandhi National Rural Employment Guarantee Act is fully inclusive of and accessible to all persons with disabilities;
- (d) Improve implementation of the four percent employment quota for persons with disabilities.

C. Specific obligations (arts. 31-33)

Statistics and data collection (art. 31)

31. Please elaborate on measures taken to:

- (a) Ensure that the next census include questions following the Washington Group's short set of questions on Disability Statistics, and to increase the availability of quality, timely and reliable data concerning persons with disabilities;
- (b) Ensure respect for privacy throughout the process of data collection and dissemination of disability-related statistical data.