

Special Chapter 1a

WOMEN WITH DISABILITIES IN INDIA

WwD India Network¹

INTRODUCTION

We write this report to address the urgent needs for the inclusion of issues of concern to Women with Disabilities (WwD). India has signed and ratified both CEDAW and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). As these two intersect and reinforce each other in the context of rights of women and girls with disabilities, effort will be made to create the necessary synchrony and synergy by referring to both.

Erasure as individuals and Invisibility as a group: that is the fate of women with disabilities (WwDs). Teased, taunted, looked down upon, and spoken about instead of spoken to, WwDs experience the combined disadvantages associated with gender and disability. They live an invisible existence on the fringes of society; exclusion, stigma and prejudice are a routine aspect of their lives. Autonomy, respect, dignity and equality of personhood are denied to them. WwD form a heterogeneous group, since disability and gender also intersect with other categories like type of disability, class, caste, ethnicity, and rural-urban residence. There is a lack of information and awareness about the rights of WwD and therefore a lack of monitoring process.

LEGAL FRAMEWORK: PROGRESS AND IMPLEMENTATION

Article-41 of the Constitution of India which forms part of the Directive Principles of State Policy explicitly mentions “disablement” as a condition for which the State is to strive, to provide assistance in certain matters including education, work, etc. The existing legal regime however, systematically marginalises WwDs in India. Interestingly, existing disability legislation in the country like the Mental Health Act of 1987, The Rehabilitation Council of India Act 1992 and the Persons with Disabilities Act 1995, does not provide a gender component. Only the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, recognises WwDs as a ‘vulnerable’ group amongst PwDs. Although disability does not figure as a prohibited ground of discrimination under Article 15 on Fundamental Rights in the Indian Constitution, the Supreme Court has recognised persons with disabilities (PwDs) as being a vulnerable group to whom the principles of equality and non-discrimination apply equally.

Keeping in mind that in reality multiple forms of discrimination intersect, including gender and disability, we strongly believe that WwDs ought to get covered under the prohibited ground of sex in **Article 15** of the Indian Constitution. This provision covers women and allows the Indian Government to make legal provisions for them. However, WwDs are left out of the reach of this provision, except for the recent focus placed on their specific needs in the Criminal Law (Amendment) Act, 2013. Arguably, any law dealing with temporary special measures provisions, rights and obligations of the State towards women should cover WwDs. However, being

invisible within the system and in the societal cycle of life, without specific mention within the provisions of law, WwDs are left out of consideration both during interpretation and implementation of the letter of the law.

Key Issues

LACK OF DATA (CEDAW GR 9 Session 8, 1989 and CRPD 3)

Data, both from governmental and non-governmental sources are silent on both disability and gender. Disability does not figure in the routine macro-data collection endeavours of the state, such as the Sample Registration System (SRS), the National Crime Records Bureau (NCRB) and the National Family Health Surveys (NFHS). The macro-level data available on disability in the public domain (Census of 2001 and the NSSO 2002) are dated, and offer only a limited understanding of the extent of prevalence of the problem of disability and its gender implications. As per the latest World Bank/ WHO Report 15% of the global population has a disability with female prevalence at 19.2% (World Health Organization and World Bank, 2011: 261). The lack of data is important to the understanding of the situation of WwD's.

DISCRIMINATION: (CEDAW Article 2 and CRPD Article 3 & 6) ²

The experience of being disabled exposes WwDs to multiple discriminations in the domains of culture, society, politics and the economy, the specificity of the particular disability creates different needs, generates subtle differences which go unrecognized. The complex issues affecting WwDs must be understood in relation to the distinct difference within various disabilities, men with disabilities and persons without disabilities, placed in the matrix of the CEDAW and the CRPD.

In its widest sense the removal of barriers form the core guiding principles of the UNCRPD. The CRPD also adds the concept of reasonable accommodation. Ensuring accessibility to persons with disabilities, through the removal of social and political barriers, including attitudinal and communication barriers should be the overarching goal of public policy. Under **Art 4** of CEDAW temporary special measures such as quotas, support and reasonable accommodation are to be used in articles on political participation and public life (also employment and education) As to WwDs political there are no special measure in the 33% reservation for women in local governance (Panchayats and Municipalities).

At the level of policy, WwDs continue to be neglected both in disability specific and gender specific programmes and policies. In the 3 per cent reservation for persons with disabilities in education and employment, there is no provision for WwDs. Even though the Persons with Disabilities Act mandates 3 per cent allocation for persons with disabilities in all poverty alleviation programmes, there is no allocation for WwDs. There is no segment of WwDs in the planning process.

Even though strong stereotypes of asexuality and hypersexuality configure the disabled identity, the complexity of disabled sexuality is lost in public policy because there is no component on WwDs for instance in the sexual and reproductive programmes. Again in the flagship schemes like Right to Education (RTE) and the National Rural Employment Guarantee Scheme (MNREGA), WwDs are absent.

Gender budgeting policy has not been applied for WwDs even in the disability-specific policies and schemes WwDs seem to be falling between the stools of gender specific and disability laws, schemes and programmes making it necessary to highlight their needs and concerns as a separate constituency for strategic intervention. There are no specific regulations that would protect and empower WwD.

EQUALITY BEFORE LAW (CEDAW Article 15 and CRPD Article 12)

WwDs continue to remain far from achieving either de-facto and de-jure equality. A legal interpretation of equal recognition before the law has been covered in various Conventions, ratified by India. The two crucial components legal capacity and access to justice are found in **CEDAW (Art. 15)** and **CRPD (Art 12 & 13)** . In India, The Persons with Disabilities Act, 1995, does not contain a single right on legal capacity. The National Trust Act limits equality by providing guardianship arrangements for those with autism, mental retardation, cerebral palsy and multiple disabilities.

The Government is also obligated under CEDAW, to deem ‘null and void’ any existing contracts and private instruments having an effect of restricting the legal capacity of women. Despite the provision of legal capacity there is a failure to recognize it by the State. It has been well known that many laws bar persons “of unsound mind” from full legal capacity in many walks of life, in-cluding marriage, contracting, political life, holding a job, voting, etc (Dhanda 2000). A quick overview of national laws shows overwhelming discrimination against all persons with disabilities on grounds of legal incapacity in over 150 laws.

A large part of the family laws are about people of unsound mind. Family laws deny capacity to be married, stay married, adopt, inherit, terminate a pregnancy, choose a pregnancy, etc. Some of these laws have guardianship provisions. Conditions are placed on the capacity of persons with disabilities in making a will. A person who is blind or “deaf and dumb” can make a will provided they can understand what they are doing. A “lunatic” cannot probate or administer a will (Davar, 2012)

According to the Representation of People’s Act 1950, a person shall be disqualified for registration in an electoral roll if he is ‘of unsound mind’ and stands so declared by a competent court. So the basic right of franchise is denied to a person with psychosocial disability.

One of the most obvious barriers to equality before law is women’s access to the justice system. Physical access to the justice system is lacking for example the family courts for instance in Chennai which women complained was inaccessible as are many others around the country. The failure to provide reasonable accommodation is the lack of sign language interpreters and materials in alternative formats for women with visual disability. If women cannot access the justice system they are excluded from rights. Their testimonies are not recorded or discounted or there is a tendency to ‘infantalize’ them, especially women with intellectual disabilities or not take it as credible if they have a psycho-social disability.

The State needs to take appropriate measures to provide access to the support they may require in exercising legal capacity. The laws that enables the removal of legal

capacity and substituting it with guardianship should be removed and replace the system with supportive decision making.

POLITICAL RIGHTS (CEDAW Art 7 and CRPD Article 29)

The ‘unsound mind’ clause in the Constitution deprives men and women with certain disabilities such as psycho-social, intellectual and autism from voting rights. The Representation of People’s Act 1950 disqualifies them from electoral roles and standing from elections. No attempt has been made to remove the discrimination under the Act 1950³. There are barely any WwDs in the local governments which ensure 50% of seats for women.

EDUCATION (CEDAW ARTICLE 10 and CRPD Article 12)

Women and girls with disabilities fare less well in the Indian educational arena than either their male counter parts or other women without disabilities. In the Population Census (2001), majority of persons with disabilities were found to be illiterate. Only a little more than one third (37%) were reported to be literate. In India’s flagship programme on education the Sarva Shiksha Abhiyan,⁴ 30% of the out of school girls are those with disabilities. The gender gap continues at all levels of education and among different disabilities. For instance lowest educational enrolment and attainment are found among persons with multiple disabilities, intellectual disabilities, speech and hearing disabilities primarily due to communication barriers and the absence of a congenial learning environment; and among these marginal categories within the disability spectrum, figures for WwDs were consistently found to be lower than for men with disabilities among the PWDs. The statistics on the enrolment of children in school education completely misses the data on children with disabilities and the gender disaggregation of data⁵. The All India Survey on Higher Education conducted by the Ministry of Human Resource Development also finds no mention on the coverage of students with Disabilities⁶. The DICE does not have any disability disaggregated information.

There are several hurdles to girls with disabilities accessing and remaining in education. Firstly, it is within families that decisions may be taken whereby it is considered necessary to invest in the education for a disabled girl with the available resources being used for the education of other siblings. Secondly, accessible transport and safe commuting options may not be available to reach school. Factors within schools like absence of special teachers: and basic infrastructural facilities, such as accessible toilets are major barriers to education of disabled girls. Schools with ramps under the Sarv Siksha Abhiyan⁷ claim to be fully accessible though approach to these ramps, right gradient of the ramp, classrooms, library, canteen, toilets, water drinking area and study material, etc are yet not made barrier free.

Absence of other infrastructure such as residential facilities and specialized equipment designed to address the need of the WwDs act as an added deterrent to education. Girls with hearing impairments suffer due to non-provision of sign language interpreters in educational institutions, work places both government and private and public places especially when sexual abuse is to be reported; Instruction in alternative forms of communication is not adequately guaranteed. In the inclusive education system adopted teachers are not adequately trained. There is no concrete evidence

that progress for girls with disabilities has been made under the Right to Education. Schemes for instance such as *Sabla* and *Ladli* instituted by Delhi Government⁸ do not have a special provision for girl children with disability.

WORK AND EMPLOYMENT (CEDAW Article 11 and CRPD Article 27)

Economic independence of WwDs is instrumental to their empowerment in the true sense. However, they are systematically excluded from the mainstream workforce misleadingly being projected as incapable of productive work and a burden on the society. Stereotypes frame WwDs as being unfit either in the traditional role of homemaker or the newer role of wage earners (Contravenes **Art . 5 CEDAW**) Additionally, stereotyping as asexual and lacking intelligence further hampers opportunity and growth in the work market.

According to the Population Census, 2001⁹ more than one third (thirty six percent) men with disabilities and nearly two- third (sixty eight percent) of WwDs between the age group of 15 and fifty nine years were found to be non-workers vis-a-vis only nineteen percent of males and sixty percent of females as non-workers among general population. The employment rate of PWD men and women compared to non-PWD is low, Women tend to be seriously under-represented in vocational training (World Bank, 2009: 104).

The Persons with Disabilities Act, 1995 also fails to give due recognition to the working capabilities of all PwDs and has in place no special provisions for WwDs. Furthermore, none of the schemes cover the fast growing private employment sector. The problems faced PwDs, and particularly WwDs preventing them from participating in the labour force and acquiring a modicum of economic self-reliance include lack of requisite skills (linked to inadequate and inappropriate vocational and skill development programmes) discrimination and doubts about their working capacity by employers, lack of accessibility, absence of representation of PwDs and WwDs in decision making positions, absence of monitoring of reservation policy in the government sector and non-implementation of affirmative action programmes in the private sector.

Most cases of complaint to the Ombudsman (National and State Commissioners for Disability) are related to the unfulfilment of the special provision on quota for disabled (even here WwD are not specifically mentioned), promotions, appointments etc. (Office of the Chief Commissioner for Persons with Disabilities Vol 1-3).

HEALTH (CEDAW Article 12 and CRPD Article 25)

Article 12 of CEDAW requires supplement from **Article 25 of CRPD** which provides for informed and free consent, reproductive rights, non-discriminatory healthcare, equal access to public health programmes, health insurance and health related rehabilitation,. In policy thinking in India, disability itself becomes the central and only health concern for PwDs, given the dominance of the medical model. For PwDs general health concerns (immunisation, nutrition) are as important as the disability specific health issues. Then, the neglect of, reproductive and child health needs of WwDs has to be addressed. With the government slowly pulling out of the health sector and the iniquitous distribution of resources even within families, gaps in access to even basic healthcare puts WwDs at even greater loss, as they figure

amongst the poorest of the poor. Discrimination in health services for WwDs is a reality that needs to be looked into.

Even within the disability sector, the gender gap in access to and utilisation of health related services is stark. Access to treatment services and distribution of aids & appliances is another robust indicator of the extent of gender gap. For instance, data from the Artificial Limbs Manufacturing Corporation of India (ALIMCO), Bhubaneswar reveals a 2:1 ratio among the male and the female users. Likewise, the data from Vishakhapatnam shows a break up of 1253 males and 458 WwDs having received appliances.¹⁰ Without access to assistive devices women's mobility and inclusion in education and work is affected adversely. A recent PIL in Delhi High Court¹¹ on public toilets highlighted that there are more than 3000 public toilets for men and less than 400 for women. Lack of accessible amenities in such toilets pose health and safety threats for WwDs, and many suffer from urinary/ kidney disorders; there is a higher rates of widowhood for disabled women (around 4 times that of non-disabled women)¹² which is a reflection of lack of health care.

Condemn and take action to prevent violence against women and girls in health care settings, including sexual harassment, humiliation and forced medical procedures, or those conducted without informed consent, and which may be irreversible, such as forced hysterectomy, forced caesarean section, forced sterilization, forced abortion, and forced use of contraceptives, especially for particularly vulnerable and disadvantaged women and girls, such as those living with HIV, women and girls with disabilities, indigenous and afro-descendent women and girls, pregnant adolescents and young mothers, older women, and women and girls from national or ethnic minorities

i. Forced Detention and Treatment

More women than men are found in mental hospitals/asylums, while men are admitted for treatment in early stages, women are dumped only after their illness becomes chronic. Women are rarely taken back home after treatment. A Study of 20 reception orders for committal or continuation of detention in a mental health facility revealed the mundane matter of fact way in which they are passed. It is also apparent that the person being committed is not presented before the court and has no say in a matter, which leads to the deprivation of his/her liberty and legal capacity (Davar, 2013).¹³ Besides fraudulent confinement, the misuse of shock treatment through Electro-Convulsive Therapy (ECT) continues despite its ill effects

ii. Forced Sterilization, Abortions and Euthanasia

A flagged realm of concern is rights of women with psycho-social and intellectual (mental) disabilities within health as they are most vulnerable in the system and subjected to forced treatment and institutionalization on the grounds of care and protection regimes. Even with the Supreme Court directions and interventions and the National Human Rights Commission's (NHRC) obligation to monitor mental health institutions and hospitals in the public and private sectors, abuse, particularly sexual abuse of women, remains rampant.

Forced sterilization within institutions and by family is common though it is a human rights violation (Phadke, 1994)¹⁴. Despite GR.No. 24 of 1999 there is no legal provision that prohibits non-consensual sterilization WwD must be able to access contraception's as per their choice. In recent years the availability of sterilization methods using certain drugs is being tried out on a large scale instead of teaching the women to manage menstrual hygiene and protecting them from rape¹⁵.

The CRPD under Art 23 and the CEDAW General Recommendations No. 19 (11th session, 1992) and General Recommendation No. 21 (13th session, 1994) recognized the existence of forced sterilization. Forced sterilization, hysterectomies and abortion of women with intellectual disabilities exists to enable menstrual management, and sexual exploitation¹⁶.

WwD rarely are involved in family planning services related to pregnancy and post natal care. Non-consensual use of these deprives WwD of legal capacity and violates their right over their bodies. A marked preference for male child with link to increased diagnosis of the sex of the unborn child has resulted in discrimination. While the PCPNDT Act (1994) prohibits sex selection, it allows a sanction of selection on the basis of disability which is socially unacceptable. Women in patriarchal societies rarely have free choice and will also result in other characteristics such as appearances (Ghai and Johri, 2011). This hierarchy based on normal and abnormal which takes away women's choice requires a change in the law.

VIOLENCE AND TORTURE (CEDAW Article 15 and CRPD Articles 15 and 16)

Violence in all its facets remains a serious area of concern for WwDs, both as an individual experience and a structural reality that systematically oppresses them in all areas of life. Adding to the greater vulnerability of becoming victims are a multiplicity of other factors, such as severity of the disability, dependence on the abuser, communication limitations (for instance, women with speech and hearing disabilities, intellectual disabilities, psychosocial disabilities), easy access to inmates in institutional setups, low or non-credibility to complaints of harassment and abuse by WwDs (particularly women with psychosocial and intellectual disabilities), myths around sexuality (WwDS are asexual or hypersexual) and the whole range socio-economic and cultural factors that configure the lives of non-disabled women in patriarchal society.

Once abuse has been experienced and acknowledged, there are many barriers to accessing justice, including complicated mechanisms for complaints and redressal, absence of accountability of both state and private actors and insensitivity of personnel in the police and judicial systems. This has already been highlighted above. A prime example of total neglect of WwDS in the criminal justice system is that there is no disaggregation on the basis of disability in the crime against women statistics generated by the government.

CRPD recognises the issue of violence and provides for protection from torture, ill-treatment, exploitation, abuse and violence under **Articles 15 and 16**. These provision when read along-with the broad principles of equality and non-discrimination and the specific provisions of elimination of prejudice under Article

5(1) and legal capacity in civil matters in Article 15 of CEDAW, would address India's responsibility to ensure for the provision of a more responsive legal framework, a stricter mechanism of monitoring, accountability and punitive action.

The critical areas of concern on the issue of violence is found both in institutes and at home:

i. Violence within Institutions

Institutions in relation to women and girls with disabilities includes mental health facilities, care-homes, residential hostels, halfway homes, homes for the destitute, juvenile homes for children with special needs and religious places. Within these places, violence can range from chaining, filthy living conditions, common bathing, non-provision of clothes especially during menstruation, physical abuse and sexual violence often repetitive in nature. However, there is no response to the problem of systemic violence of this sort.

Additionally, provisions for monitoring remain almost unimplemented. For example, as per the Mental Health Act of 1987, the only penalty for private run institutions is revocation of license, which can be renewed after payment of fine and improvements suggested by the authority. Thus, state responsibility and accountability of personnel becomes even less in institutions run by private entities and non-existent in case of religious places, where it is very common to take women with psychosocial disabilities for treatment through prayer and black magic. Sexual violence within mental hospitals still is a largely unaddressed area apart from the other forms of mental and physical violence that is experienced by the women housed therein. Moreover, the insensitivity of officials, staff of institutions and carers towards issues of abuse only compounds the problem. The below given chart is an illustrative examples of cases of violence and sexual assaults within mental institutions in the State of West Bengal.¹⁷

Sl. No.	Date	Name of the health facility	Brief description of the case	Action taken by the State	Action taken by Anjali
1	31.03.2007	Pavlov Mental Hospital	A female resident commits suicide within the ward. The resident had broken her hand two weeks before but had received minimum treatment like plaster because of the negligence of the hospital authorities.		Media advocacy
2	01.07.2007	Baharampur Mental Hospital	A female patient dies at the hospital with complaint of piles.		Media advocacy

3	28.07.2007	Baharampur Mental Hospital	A female patient was confined in a small room with no help as she was suffering from TB.		Media advocacy
4	24.08.2007	Baharampur Mental Hospital	A female resident was hit by a Group D staff and broke her elbow. Distribution of sanitary napkins to female residents has been stopped at all Mental hospitals.		Media advocacy
5	10.03.2008	Pavlov Mental Hospital	Women nude within the ward. When a consulting doctor questioned the Group D and Nursing staff regarding this inhuman treatment. A section of the Group D staff complaint against the doctor and asked for immediate apology.		
6	03.11.2008	Baharampur Mental Hospital	A female patient choked to death by another female patient		Media advocacy
7	06.04.2011	Pavlov Mental Hospital	Attempt to sexual assault of a female resident by a Group D staff.	The Group D staff was suspended. An enquiry committee was formed. No reports were shared	Media advocacy & detailed fact finding
8	12.04.2011	Baharampur Mental hospital	Women residents brought out of the hospital to the main office at night on the pretext of getting them to talk to their family members and would be abused by the hospital Group D staff and contractor	An enquiry committee was formed. No reports were shared.	Media advocacy

9	23.04.2012	Pavlov Mental Hospital	Sexual assault of a female resident by kitchen staff.		Media advocacy & detailed fact finding
10	17.09.2012	Lumbini Park Mental Hospital	A female patient was sexually assaulted by a male Group D staff.	The Group D staff was suspended. An enquiry committee was formed. No reports were shared.	Media advocacy & detailed fact finding
11	07.05.2013	Pavlov Mental Hospital	A female patient gave birth to a baby boy late at night and was left unattended for several hours in the pool of blood and fluids. The Group D and nursing staff hurled abuses and made her clean herself and the bed.	An enquiry committee was formed. No reports were shared.	W.P. No. 15158 (W) of 2013 Ratnaboli Ray vs. State of West Bengal and others

In recent years there has been increased reporting of violence against WwDs in shelter homes, training institutes and schools¹⁸.

ii. Violence within Homes

Although the Domestic Violence Act, 2005 is being implemented to address issues of violence and abuse in the domestic setting for all women, WwDs continue to face serious abuses at the hands of relatives. These include the deliberate acts of seclusion, denial of basic amenities, chaining, mental abuse, emotional deprivation and abandonment. For WwDs abandonment happens at two levels, one due to their disability and the other when they are discovered to have been victims of sexual violence, especially in instances where they have conceived as a result of the abuse. In both cases, their vulnerability increases to more sexual abuse in the society by their unprotected and homeless state of being. Unfortunately, railway stations are a convenient place for such acts of abandonment. From the point of view of disability, there are two striking shortcoming in addressing violence and abuse in the home setting, as the law only deals with situations where the perpetrator is a male member with whom the woman is living in a household relationship and does not cover female perpetrators and carers. Incest is a common phenomena (Malyala Manoram, 2011).

Although abuse and violence within families for gaining control of property (immovable and movable) left for the benefit and care of a PwD family member is common, WwDs caught in such scenarios are worse off than their counterpart men with disabilities due to the added dimension of gender.

iii. Violence in Conflict Regions

For WwDs living in conflict areas, all these factors get further exacerbated in the conflict environment, making them easy targets for abuse and violence. Besides disability due to shooting and landmines, high Post Traumatic Stress Disorder has been found among WwD. Women in these situations suffer more than WwD elsewhere¹⁹.

FAMILY LIFE AND MOTHERHOOD (CEDAW Articles 5, 12, 16 and CRPD Article 22)

Many WwD especially those with intellectual disability are denied family life and motherhood. Stereotypical views of WwDs results in their staying outside family life. To overcome this instead of providing rehabilitation and other facilities many States have started coercion into marriage. A shockingly unethical scheme is in operation contributing to increasing violence on WwDs in the guise of enhancing their matrimonial opportunities. States like Maharashtra, Chhattisgarh, Himachal Pradesh etc are running schemes of paying financial benefits ranging from 5,000 up-to 50,000 rupees to non-disabled persons to marry PwDs²⁰. WwDs are highly prone to being used as a means to access this incentive money. Many WwDs are married to as second wives, with no legal standing to claim any matrimonial benefits or protections, thus getting entrapped in marriages where they are exploited, abused and violated with no system of checks²¹.

WwD with children find their children being forcefully removed from their care. Divorces are very high as many marriages are conducted for reasons of dowry. Women lost custody of children after divorce and called unfit mothers.

RURAL WOMEN (CEDAW Article 14 and CRPD Articles 9, 25, 26)

As high as 75.03% of women with disabilities live in rural areas. Most of them are left out of health care and literacy levels are lower. Most women work in agriculture related activities but orthotics and prosthetics are not made for these activities. Though India has many schemes related to rural development disability is not a focus area. Accessibility to self help groups has 3% reservation but no data is available to know if women access it. Lack of toilets is a major problem in rural areas leading to women being raped²². Rural women from hilly terrains such as Jammu and Kashmir and Manipur were found not to be able to access medical care as communication is difficult²³.

ACCESSIBILITY (CRPD Art 9)

Article 9 of CRPD recognizes accessibility as a basic right, which not only includes physical and infrastructural accessibility but also access to appropriate information, communication and services. The Persons with Disabilities (Equal Opportunities,

Protection of Rights and Full Participation) Act, 1995 section 44-46 stipulates non-discrimination in the built and transport environment. Although the government is trying to bring about physical/ environment accessibility, lack of adequate planning and shoddy implementation lead to more obstacles than solutions. In none of the initiatives undertaken, is the gender perspective incorporated in the design and planning.

When **Articles 6 (WwDs) and 9 (Accessibility)** of the CRPD are read in tandem, the gap in the CEDAW with regard to gender, disability and accessibility are covered, but require further specificity.

PWDs cannot access education, health, employment / livelihood opportunities, leisure and recreation, tourism, etc. in the absence of accessible and safe infrastructure- built, transit and external environments. Police stations remain inaccessible and out of reach as does the judicial system. Recent rapes in Delhi had occurred due to poor illumination levels in pedestrian infrastructure, dark spots and high (dead) boundary walls of buildings. Streets are not active- “no eyes on street” due to inadequate planning of hawkers. Red light free zones and flyover connectivity lead to the serious incidents like 16th Dec. 2012 gang rape even with the non-disabled woman. For WwDs, such inaccessible infrastructures and barrier pose serious threats to their mobility and physical security. There us also rarely any support of either government or civil society in general including the women’s movement, this was observed in a case of a blind girl raped, tortured and killed (the same as Delhi but no organization highlighted it except this network).

Wheel-chair and /or tri-cycle are required by women with locomotor disabilities, especially in absence of accessible public transport system. Yet, the Aids and Appliances (ADIP) scheme by Ministry of Social Justice and Empowerment, Government of India does not have specific dimension, standards and customized options for WwDs.

AGENCY

Women with disabilities are victims but are also agents of change. The four hundred women who contributed to this report have been leaders in their own right. From academics, to rural SHG leaders, to NGO heads to indigenous women their contribution to women’s cause cannot be denied.

CONCLUSION

It is submitted that any comprehensive plan for transforming the status of women in the country must be both gender and disability-sensitive. This can be enabled by using the existing Concluding Comments and General Recommendations made by the CEDAW Committee.

In para 26 of the Concluding Comments to India’s II & III period report, the Committee has acknowledged the issue of witch-hunting of women, which is also a concern for many WwDs who fall victim to such practices. Therefore, any initiative taken by the Government of India to address this issue would require a disability sensitive approach as well.

The fact that WwDs concerns while making measures for protection of women from violence does not figure is clear from the missing disability component in the National Policy for the Empowerment of Women, 2001 and the Indian government's responses to the Committees comments in para 15 and 16 of its II & III period report to CEDAW, where none of its statistics reflect crime against WwDs. Furthermore, in para 20 of the II & III period report where a response is being made to violence based on caste, the component of WwDs from the ST/SC communities is missing though WwDs are present in all cross sections of society and disability becomes a multiplying that than just an additive factor from an intersectional perspective.

In the Government of India II & III period report in para 357, it is noted that the government is working to strengthen existing legislation and developing institutional machinery to address the violence against women and also running programmes to support vulnerable women who stay in short stay homes, hostels etc. However, there is no mention of any special provisions for addressing the issue of violence faced by WwDs in various government run and privately owned institutions, homes and hostels.

The reality of the greater vulnerability of WwDs has been accepted by the Government of India, in para 295 of its draft IV & V report to CEDAW, wherein it clearly states that a study conducted in 2010-11 by the Indian Institute of Technology, Kharagpur on "Disability and Victimization: A Study of Vulnerability of Disabled Women and Protection Strategies", for the Ministry of Social Justice and Empowerment indicate that, "...Women have accepted the fact of victimisation at home and outside due to their disability; and access to legal assistance and remedy is a major roadblock for the women with disabilities."

CEDAW COMMITTEE

The recent committees have started to take cognizance of them. The CEDAW monitoring committee in their most recent Concluding Observations (Cos) at their 54th session²⁴, covered women with disabilities under the broader term 'underprivileged women'. These covered social, economic and cultural rights such as education, employment, social security. The committee has noted the multiple discrimination and harmful stereotyping of vulnerable women, including women with disabilities. Civil political rights including legal capacity have not come up in the concluding observations in the context of women with disabilities.

Annexure 1

CASES AND RECOMMENDATIONS AND QUESTIONS PROPOSED TO BE RAISED PROVIDED BY PARTICIPANTS AT CONSULTANCY MEETINGS OF THE Wwd INDIA NETWORK ²⁵

Forced Detention and Treatment

Forced Treatment: A young woman sitting quietly and listening to Malini Chib an icon in the women's movement speaking on sexuality in a meeting in Pune finally broke silence to speak of her husband having her incarcerated forcefully and treated in a mental asylum. Separated from her children she was told by the doctor that she was being treated for being angry and suspicious. Put on high drugs and ECT without her consent finally she broke free and stopped her medication and found that was better without them. In 2007 her husband filed for divorce and filed for custody of the children and their flat. Her case is in the family court, her husband pays her INR 7000 as interim maintenance when his earning is INR 150000 per month and has taken the children from her (Pune WwD meeting).

WwDs in Conflict Zones

She is blind, her husband a driver was shot in a fake encounter by the police. She had to leave her in-laws to stay separately as they would be also targeted by the police. Her two sons and she survive on INR 2000 provided by an NGO. She goes home to get rice sometimes which the in-law family provides as they cultivate the rice fields which belonged to her husband (Imphal, Manipur Meeting on 18th December 2012).

In Jammu and Kashmir landmines, shooting and suicide attacks are common. A young mother of four injured by a suicide bomber near the Dal Lake in Srinagar. She lost her husband in the attack, she lost her vision she cannot work and is looked after by her 14 year old child (Case provided by participant at Srinagar on meeting on 11th May 2013).

Sterilization

Institutional sterilization by using contraceptive pills such as DEPRO-V banned by the government is common in Bangalore (NGO worker in Bangalore Meeting on 4th February 2013). In Andhra Pradesh Mehboob Nagar Block rural women spoke of hysterectomy as being a common method being used on girls with intellectual disability. At least 20 cases had been documented.

Education

Women from rural schools find either there are no toilets or if any they are inaccessible so girls get urinary infection and cannot change when menstruating (Hyderabad 22nd February 2013).

Lack of sign language teachers results in illiteracy as Government has only one recognized sign language institute at national level. This also increases burden of sign language teachers (Chennai 6th February 2013 and Hyderabad 22nd February 2013)

Work

A family with two sisters and a brother have a hearing disability in Srinagar. The two girls are educated but have been denied jobs wherever they applied. The brother has a job (Srinagar 11 May 2013). The patriarchal system work.

In Private organization large multinationals who employ WwD are infantilised (pinching cheeks) or sexually abused. Toilets are uni-sex so when a woman on a wheelchair went in she could not close the door so she had asked a friend to stand outside to stop someone else going in.

A Dalit women with disabilities face marginalization and high amount of sexual abuse²⁶. Outside Delhi a 35 year old Dalit woman a mother of three who worked as a domestic help was gangraped by five persons²⁷

Marriage and Divorce

She is 30 years old her husband married her sister after she sustained a spinal injury (Bhubaneswar, 8th January December 2012). After two years she has been abandoned.

Near Madurai in Tamil Nadu a WwD was married as second wife but forty days after marriage once government benefits announced she was tortured and could not file a case as she was from a rural area there was no legal aid (Chennai, 6th February 2013)

Incapacity laws in family courts in Pune used “unsound mind” in most divorce proceedings. One marriage was annulled on the basis of finding a “moderate depressive episode with somatic syndrome” and case filed on ground of indanity and fraud and 6 previous sexual relationships (cited in Pune on 8th April 2013)²⁸

Property

I have a property my brother has forcefully taken it away I am now living in a small hut sleeping on the ground (Chennai, 6th February 2013).

Rape in Institutions

In Rajasthan Kannauta five young girls with hearing and speech disability raped by four NGO staff running a residential school. Two were repeatedly raped and two beaten consistently (Delhi Meeting 18th June 2013 by participant from Rajasthan).

In Mumbai in Panvel in 2012 5 girl children raped in a shelter home (Pune Meeting 8th April 2013).

Rape and sadistic torture of girls with visual and hearing disability in Chandigarh, Lucknow and Allahabad and Haryana took place in large numbers (Cases compiled and presented by Bhargavi Davar Pune, 8th April 2013).

Abortion and Rape of Dalit WwD

In Jind Haryana a 20 year Dalit girl with intellectual disability was raped 3-4 times by a person from a higher caste. The girl was found to be pregnant and the pregnancy aborted without her consent. The man tried to bribe them but finally a case was registered and is sub-judice (Case by Anjali Agarwal presented Special Rapporteur of Violence Against Women Rashida Manjoo on in New Delhi).

RECOMMENDATIONS

Recommendations: Among the recommendations to the Committee to take up with the Government are:

Highest Priority

- i. Disaggregated Data based on gender and disability
- ii. Removal of discriminatory Laws such as MHA which affect women
- iii. Stringently implement monitoring mechanisms in institutions of care and protection covering public and privately run institutions be implemented with immediate effect
- iv. Repeal of all State level policies such as those offering financial benefits to non-disabled individuals for marrying PwDs;
- v. Ensure that involuntary treatment, such as forced abortion, contraception, sterilization and incarceration are not permitted by law on WwDs.
- vi. Remove from the PCPNDT Act the clauses on disability
- vii. Guidelines and laws for monitoring of religious institutions (shrines, temples, dargahs) purporting to cure certain disabilities.
- viii. Ensure that no direct Electro-Convulsive Therapy (ECT) is given to anybody and under any circumstance. Ensure that the penal laws are amended to punish those who violate this requirement.
- ix. Awareness creation and sensitization on a national level to remove discrimination against WwDs

General

- x. A National Policy for WwD, with Strategies and Plan of Action
- xi. Ensure participation of WwD in decision/policy making, implementation women's policies.
- xii. Need for India to pass its draft law on torture to realise its obligation under CAT, with a disability and gender specific approach.
- xiii. Inclusion in the gender budgeting process and provision of adequate funding

Specific Recommendations

Education

- xiv. Initiate review of policies on primary, secondary, vocational and non-formal education from the lens of the rights of girls/women with disabilities as mandated by the UNCRPD, CRC and CEDAW with a view to amending existing policies in order that they are responsive as well as inclusive of women and girls with disabilities including those in rural areas.

- xv. Initiating schemes and providing support services for girls and women with disabilities in order that their personal care is taken care of while in educational institutions.
- xvi. Providing special allowance to families to meet the educational expenses, allowance covering transport costs, scholarships, etc. may be encouraged. They serve as effective incentives by reducing financial costs of the families and check drop out.

Work and Employment

- xvii. Reasonable accommodation in infrastructure, working conditions, communication etc. to ensure accessibility of WwDs to the labour force.
- xviii. Specific mechanisms to address harassment faced at work by WwDs.
- xix. States should be mandated to formulate special schemes for training and skill development and for self employment of WwDs..
- xx. Vocational training linked up with employment opportunities may be provided exclusively catering to the need of the WwDs.

Violence

- xxi. Review all legislation, policies and programmes related to violence against women from a disability sensitive perspective;
- xxii. Put in place guidelines on the issue of identifying, addressing, redressing and rehabilitation in case of abuse of WwDs, especially in institutional settings;
- xxiii. Special measures are taken for generating awareness regarding the Domestic Violence Act, 2005 amongst WwDs;
- xxiv. Training on women and disability issues and concerns in relation to violence is provided to all law enforcement and judicial agencies, so that functional mechanisms of redress can be established;
- xxv. Place accountability on State officials overseeing the functioning of privately run institutions where WwDs are housed in case of a report of violence against a WwD resident;

Health

- xxvi. Ensure that accessible health care services based on the dignity and integrity of WwDs are provided.
- xxvii. Sensitization of medical professionals, staff & carers on how to behave & interact with WwDs.
- xxviii. Sexual and reproductive health services are not denied to WwDs and they are provided taking the free and informed consent of the individual.
- xxix. Institution and implementation of punitive measures for medical and para-medical personnel who engage in malpractices, discrimination and wrongful treatment of WwDs.
- xxx. Amendment to the provisions of the RCI Act and its rules dealing with disciplinary action against a professional in case of misconduct.

Accessibility

- xxxii. Involvement of WwDs in planning and designing of all infrastructure facilities and services (public buildings, transit system and social & virtual environment), so that they are not left out of the loop.

QUESTIONS THAT NEED TO BE RAISED

CEDAW Article 1, 2, 3, 4 & 5 (CRPD Articles 3, 6 & 9)

Question: What legislation have been adopted to create an environment of equality in the context of disability. Have these been promoted and implemented? Information: What statutory enforcement measures are being taken to ensure protection of women and girls with disabilities from discrimination being faced on the grounds of disability and other intersecting factors such as gender, age, socio-economic status, caste, race, etc?

Questions: What programmes have been launched for the sensitisation and training of government Information: Report on the effectiveness of such training in addressing the attitudinal barriers that hinder the full and effective realisation of the rights, entitlements and benefits of women and girls with disabilities?

Question: i. What temporary special measures have been taken to address the specific issue of discrimination and inequality being faced women and girls with disabilities under the special provision for women under Article 15 of the Indian Constitution? ii. What measures have been taken to encourage the non-stereotypical images of WwDs in the media and social and cultural system? Information: What steps have been taken to collect data (both disability and age specific) of women and girls with disabilities in this regard

Political Rights Art 7 and CRPD Article 29. Question: Question: Has any attempt been take to remove the discrimination under the Representation of People's Act 1950 Information: What steps have been taken to ensure that WwDs enjoy all aspects of their civil and political rights and these are not denied or diminished

Legal Capacity CEDAW Art 15 & CRPD Article 12 Question Are women with disability able to exercise legal capacity on an equal basis with others? Information: What steps have been taken to ensure the provision of full legal capacity under all domestic civil and criminal laws to all women with disabilities, which in effect would include women with disabilities irrespective of the disability?

Question: What steps have been taken so that WwDs access justice. Information: Are there any free legal services for WwDS and are the police stations and courts accessible? Have the use of universal design in the development of standards and guidelines have been promoted with inclusion of WwDs. Have any steps been taken to facilitate access to justice of victims of rape and other forms of sexual abuse. Is there data available on this incidence?

Education: CEDAW Article 10 CRPD Article 24 Question: Has the Government taken any measures to reduce inequalities in educational participation of WwDs.

Information: What steps are being taken to collect disability and age specific data on girls with disabilities under the Sarva Shiksha Abhiyan (SSA) programme with regard to both admissions and drop outs? What measures are being taken to address the issue of admissions and retention in the educational institutions of girls with disabilities through the means of interventions, trainings, policy and programmes?

Work: CEDAW Article 11 CRPD Article 27 Question: What legal framework is being developed to bridge the gaps of inequality of opportunities for women with disabilities under the various labour laws and employment provisions of the government? **Information:** What is the current percentage of women with disabilities being employed under the employment provisions under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in comparison to men with disabilities? What steps have been undertaken to collect data (disability, age and socio-economic status specific) under the 3% reservation for women in jobs and schemes?

Health CEDAW Article 12. CRPD Article 25: What legal measures are being undertaken to protect women and girls with disabilities from forced sterilisation in public and private hospitals and private medical practitioner clinics? **Information:** Laws and Notifications to this effect. **Question:** What measures are being adopted to address the issue of rampant violence and abuse in institutional settings for care, protection and treatment of women and girls with disabilities like mental health facilities? **Information:** What steps are being undertaken to create accountability and reporting mechanisms for treatments and/or purported treatments being provided in religious places, and such places where it is known that women and girls with disabilities are taken for treating their condition of disability under forced and violent conditions? **Question :** What measures have been undertaken to remove the barriers to accessing health facilities in both public and private healthcare settings for women with disabilities in relation to disability related healthcare, reproductive health needs and general healthcare for women and girls with disabilities in both urban and rural settings? **Question :** Has the Government taken any steps to amend the PCPNDT Act which provides euthanasia measures in the context of disability.

Violence: CEDAW Article 15 CRPD Article 15 & 16 Question: What legal and awareness measures are being undertaken to ensure protection of women and girls with disabilities from violence, abuse, exploitation and torture? **Information:** What steps are being undertaken to collect data (disability and age specific) on cases of violence, abuse and torture?

Family Life Life and Motherhood: CEDAW Article 16 (12&5) CRPD Article 22 & 23 Question: Do women with disability enjoy freedom from arbitrary or unlawful interference with their privacy, irrespective of their living arrangements? **Information:** What steps are being undertaken to ensure that government incentive to marry women with disabilities does not result in women with disabilities getting trapped in forced marital relationships entered into solely for the purpose of accessing financial benefits by the family?

Data Collection: CEDAW GR 9 session 8 of 1989 & CRPD Article 31: Statistics and data collection **Question:** What measures have been taken to initiate and implement a disaggregated disability data system **Information:** What are the findings

on the status of participation of women with disabilities in the education, health, work (organized and unorganized) and political sphere on this basis of the collected data?

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¹ The report is the product of the Women with Disabilities (WwDs) India Network' formed in October 2012 to deliberate upon and advocate for the rights of WwDs. Its major work has been to produce this report for the CEDAW Committee to understand the issues related to WwDs. Fifteen consultations were organized across India with more than 400 WwD participating. The Report has been written by a group of women with disabilities Renu Adlakha (lead writer), Anjali Agarwal (Coordinator) Meenakshi B. Rajiv Rajan (Work and Education), and Reena Mohanty (Administrator). Seema Baquer provided the Legal Framework. Specific case material was provided by Bhargavi Davar, Shampa Sen Gupta, Ratnaboli Ray and more than 400 women with disabilities across India. The consultation meetings were coordinated by Shanta Memorial Rehabilitation Centre Bhubaneswar and organized with support of AADI in New Delhi, Babu Trust in Pune, DLU South/Vidya Sagar in Chennai, Mitra Jyoti and South Asia CBR Network Bangalore, Rehabilitation Council Jammu and Kashmir,, Swadhikar, Commitments and NPDPO in Hyderabad; Samarthyam New Delhi, Integrated Women and Children Development Centre Imphal.

² Article 6 of CRPD recognizes the multiple discrimination WwD are subjected to and in this regard asks States to the full and equal rights of women.

³ Section 16 subsection 1; Section 102 sub section 1 and Section 191 subsection 1 are the articles of exclusion. Other Acts which entrench the exclusion are the MHA 1987, RCI Act 1992 and National Trust Act 1999.

⁴ Sarva Shiksha Abhiyan (SSA) programme is aimed at Universal Elementary Education. It was launched in January 2001 in order to provide useful and relevant education for all children in the age group of 6-14 years by 2010. It is an attempt to provide an opportunity for improving human capabilities to all children, with special focus on bridging social, regional and gender gaps, through the active participation of the community in the management of schools.

⁵ http://mhrd.gov.in/sites/upload_files/mhrd/files/SES-School_201011_0.pdf

⁶ http://mhrd.gov.in/sites/upload_files/mhrd/files/All%20India%20Survey201011Book_2.pdf

⁷ Education for All, Ministry of Human Resource Development, Government of India

⁸ Under the Sabla and Ladli scheme, the Delhi Government has declared Rs. 1 lakh incentive on the birth of a girl child

⁹ Visit <http://www.censusindia.gov.in>

¹⁰ Office of the Controller of Vagrancy. And Govt. of Andhra Pradesh. 2006 Disabled Welfare Visakhapatnam. Govt. of Orissa, Dept. of Women and Child. 2006 in A Multi State Socio Economic Study of WwDs in India (UNDP, Govt. of India and SMRC), 2007

¹¹ Ashok Agarwal Vs Govt. of Delhi, 2013

¹² Data from NSSO 2002. There is no disability after this report

¹³ A RO is an involuntary admission made under the MHA, by bringing a person before a court for certifying as mentally ill and adjudicating right to liberty, to further admit that person in the asylum. A total of 20 Reception Orders were looked at of 2010, from the court of the Chief Magistrate, Pune district court, Pune: 0402030/2010, 2555/2010, 2575/2010, 2592/2010, 2593/2010, 2629/2010, 2890/2010, 2857/2010, 2841/2010, 2828/2010, 2812/2010, 2763/2010, 2857/2010, 2755/2010, 2737/2010, 2703/2010, 2685/2010, 2673/2010

¹⁴ This was a major point of discussion at the Regional Meeting of the WwD India Network organized in Hyderabad on 23-24th February 2013

¹⁵ WwD India network meeting in Bangalore on 4th February 2012. information by local NGO using the methods.

¹⁶ In a strongly fought case with Supreme Court intervention, a High Court ruling of forceful termination of pregnancy of a girl with intellectual disability who had been raped in a State run Shelter was overturned and the girl allowed to have the baby. Suchita Srivastava v. Chandigarh Administration (2009) 14 SCR 989

¹⁷ The chart has been prepared by Anjali Organisation in Kolkata on the basis of information gathered by them.

¹⁸ In VRC for Handicapped on 8th August 2013 a woman trainee was raped by an instructor

¹⁹ WwD India Network meetings in Imphal (Manipur), Srinagar and Anantnag (Jammu and Kashmir)

²⁰ Shivani Gupta's initial report started a process of protests <http://accessability-india.blogspot.in/2010/10/50k-incentive-by-state-to-marry.html>

²¹ This was raised as a serious area of concern by WwDs at the consultations held on the issues of WwDs by the WwDs India Network in October 2012 and June 2013.

²² High Court of Orissa W.P (Cri) No 1127 of 2013 filed against State of Orissa by Sashiprava Bindani on behalf of SMRC.

²³ WwWD India Network Consultancy on CEDAW in Srinagar on 12th May 2013.

²⁴ The CEDAW Committee Concluding Observations, 54th session,
<http://www2.ohchr.org/english/bodies/cedaw/cedaws54.htm> &
http://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1_en.pdf

²⁵ The network organized consultations from 1st October 2012 to 11th May 2013 where about 44 women with disabilities and some DPOs participated.

²⁶ Cases by WwDs in the Chennai consultations on 6th February 2013.

²⁷ Case by WwDs in the Delhi meeting on 1st October 2012.

²⁸ Mr Vinod Vilas Arabale versus Ms Shilpa Vinand Arabale Petion No A No 487.2011