

 **CRPD Alternate Report for India** 

Submitted to the Committee on the Rights of Persons with Disabilities

 **In response to the Initial report
submitted by the Government of India** 

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Submitted by:
National CRPD Coalition-India, towards Parallel report, 2019

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Executive Summary

India has a strong constitution guaranteeing fundamental rights justiciable to all. We appreciate the GoI for further strengthening its commitment towards rights of persons with disabilities by ratifying the CRPD in 2007, without reservation. However, the government *has not signed the Optional Protocol*. Subsequently the country adopted the Rights of Persons with Disabilities Act (RPDA) 2016 and Mental Health Care Act (MHCA) 2017 towards harmonization. This report is based on these two Acts. Harmonizing other disability laws, common laws and policies has lagged far behind, significantly impacting full enjoyment of rights and inclusion of PWDs.

The 2011 census pegs disability at 2.21%, which is lower than global average¹. The disability sector estimates 4-5%, while World Bank estimates 4-8% disability prevalence in India^{2, 3}. Disability inclusion is an issue spearheaded by the Ministry of Social Justice and Empowerment (MSJE) but has not been addressed in a cross-sectoral manner, with only 8 out of 100 Ministries and Departments have any mention of persons with disabilities in their programs and schemes.

Systemic inconsistencies

Lack of efficiency in spending

The central governments contribution towards the specific expenditure for persons with disabilities as a percentage to total expenditure has remained constant at merely 0.02% in the last three years (Annexure Table 1). Unfortunately, while on one hand the total allocation towards disability is inadequate; on the other hand, there is high underutilization of even these funds each year. Moreover, all functioning schemes are based on the erstwhile PWDA without amendments. New mainstream programs do not address disability specific requirements⁴.

Lack of disability disaggregated data and poor monitoring

Capture of disaggregated data is a failure across all levels of governance in all sectors that makes it difficult in designing, implementing and monitoring programmes. Though RPDA talks about social audit of all schemes and programs concerned with persons with disabilities, this is not reflected in policy design.

Non-uniform coverage of entitlements

Disability certification is the key to access entitlements and social protection programs across the states, however, till August 2017, only 57.98% of the disabled population have been issued disability certificates⁵. Moreover, there is a non-uniform coverage of entitlements with a stark

¹Mampatta, S. (2015). "India's Missing Disabled Population" *Live Mint*, 16 Sept 2018. Accessed on 25.12.2018 on <https://www.livemint.com/Opinion/1rx8tSYGwHB0ZRsvdNFiBP/Indias-missing-disabled-population.html>

²Keefe, o' P. (2009). "People with Disabilities in India: For commitment to outcome". World Bank.

³Reference article 31 of this report.

⁴Reference Indira AwaasYojana and the Swachh Bharat Abhiyaan elaborated in Article 28 of this report.

⁵Annual Report, Department of Empowerment of Persons with disabilities 2017-18. Accessed on 17.12.18 at [http://disabilityaffairs.gov.in/upload/uploadfiles/files/Annual%20Report%202017-18%20\(E\)\(1\).pdf](http://disabilityaffairs.gov.in/upload/uploadfiles/files/Annual%20Report%202017-18%20(E)(1).pdf)

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variation across regions in fund allocation for per-capita spending in different States and union territories. Persons with disabilities living in rural areas are ignored in coverage.

Lack of participatory process

There is a lack of involvement of persons with disabilities in policymaking and planning by all ministries⁶.

It is evident from our report to the Committee that there is systemic failure by GoI in realizing CRPD rights, despite 10 years of having ratified the CRPD.

Methodology for writing this report

This alternate report is submitted on behalf of the **‘National Coalition towards the CRPD parallel report’**. The coalition comprises of 30+ organisations from different parts of the country. In addition to prominent national organisations working for persons with disabilities, the coalition reached geographically and constituency wise marginalised groups of persons with disabilities including organisations from rural, hilly and forest areas, slums, and all regions of India. We also had representatives from the deafblind, leprosy, rare diseases groups, and intellectual disability self-advocates, other than human rights organizations working with women, children, indigenous people and marginalized groups, to make the report as inclusive as possible.

The steps taken for writing the parallel report were as follows:

Step 1: A mapping was undertaken to know whether organisations across India were working towards a parallel report. Over 60 organisations were contacted via email and calls. A few organisations were reporting on specific articles only. Since no active / collective process towards the parallel report was identified, all these organisations were invited to join as a National Coalition towards the parallel report. Additional invitations were sent by snowballing method.

Step 2: Two zoom calls were organised for all members. The first call was about getting acquainted with the process; provide their feedback to the process and to clarify doubts. The second zoom call was to discuss various aspects of the two-day consultation that was organised after the completion of step 4.

Step 3: All members of the Coalition were invited to share their response to India report in relation to the different articles they were working in. Over 25 written contributions were gathered that were shared with all members of the Coalition.

Step 4: A two-day consultation of the National Coalition was organised on 13-14 December 2018 in Hyderabad. Panel discussions were organized article wise and all members highlighted their concerns. The discussion transcriptions were shared with all members and used for drafting the report.

⁶ Reference Article 9, 20 of this report

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Step 5: A drafting team was identified from within the Coalition that collated the information received from the written contributions and from the discussions during the consultation.

Step 6: The draft parallel report was shared with all members and with International Disability Alliance for further inputs, which was then finalised into the report.

List of organisations who participated and / or endorsed the report

AccessAbility, ADD India, Adv. Subhash Vashisht, Anantha Vikalangula Hakkula Vedhika, Association for Women with Disability-West Bengal, Aastha, Babu Trust for Research on Mind and Discourse, Bhor Foundation, CBR Forum, CBR Global Network, Council for Social Development, Daisy Forum of India, Deaf Enabled, Disability Law Unit, Chennai, Ektha, EQUALS Centre for Promotion of Social Justice, Light of the World, Mixed Media Productions, NPRD, ORDI India, Rising Flame, Rural Development Trust, SACRED, SAFI, SAMARUTH, Sampark, Seher Urban Community Mental Health and Inclusion Program, Sense International India, Sight Savers, Shanti Memorial Research Centre, Sruti Disability Rights Center, Social Equity, Swabalambi, Swadhikaar, Dr. Sandhya Limaye, The Red Door, The Association of People with Disabilities, The Leprosy Mission Trust India, Vidya Sagar, V-Shesh, Women with Disabilities India Network.

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Abbreviations

ADIP - Assistance to Disabled Persons for Purchase / Fitting of Aids and Appliances scheme
AIC – Accessible India Campaign
ALIMCO - Artificial Limbs Manufacturing Corporation of India
CRPD- Convention on the Rights of Persons with Disabilities
DCPCR – Delhi Commission for Protection of Child Rights Act
DDRS – Deendayal Disabled Rehabilitation Scheme
DEPD - Department of Empowerment of Persons with Disabilities
GoI – Government of India
ICDS – Integrated Child Development Service
JNNURM - Jawaharlal Nehru National Urban Renewal Mission
LA1978 – Leprosy Act 1978
LoI - List of Issues
MHA1987 - Mental Health Act 1987
MHCA2017 - Mental Health and Care Act, 2017
MSJE - Ministry of Social Justice and Empowerment
NCPCR – National Commission for Protection of Child Rights
NDP – National Disability Policy
NFHS – National Family Health Survey
NHFDC - National Handicapped Finance and Development Corporation
NSSO- National Sample Survey Office
NTA1999 - National Trust Act 1999
PIL – Public Interest Litigation
PWDA 1999 - Persons with Disabilities Equal Opportunities and Full Participation Act 1999
RCI – Rehabilitation Council of India
RPDA2016 - Rights of Persons with Disabilities Act 2016
SC - SC of India
SR - Special Rapporteur
WCGA - Web Content Accessibility Guidelines 2.0

The Parallel Report

Article 2 - Definitions

20. The RPDA2016 has conserved CRPD definitions of communication, discrimination on grounds of disability, reasonable accommodation and universal design. However, the 'universal design' definition does not mandate adaptations of assistive devices and advanced technologies. The definition is restrictive and conditional ("greatest extent possible").

The RPDA2016, provided 3 types of definitions of a person with disability. Groups representing rare diseases, burn, spinal cord injury and Little People, have challenged their exclusion. The Standing Committee set up by GoI recommended inclusion of certain medical conditions⁷. There are also representations in the High Court seeking an inclusive definition.

The recent Mental Health Care Act 2017 [MHCA2017] has used medical definition of disability and is not CRPD compliant⁸.

Additionally,

RPDA2016 vide section 2 has included sign language which however is not further defined. A constitutional amendment could have been considered for state recognition of sign language⁹.

GoI took a unilateral decision to refer to persons with disabilities as '*Divyangjan*' (people with divine bodies)¹⁰, which met with unanimous opposition from DPOs^{11, 12} who perceived it as a charitable gesture. The DEPD has subsequently changed to using 'Divyangjan' in the official languages of the department¹³ and in all its official communications^{14, 15}.

⁷ Fifteenth report standing committee on social justice and empowerment (2014-15). (16th Lok Sabha) Ministry of social justice and empowerment, Dept. of empowerment of persons with disabilities. Rights of persons with disabilities Bill 2014, presented to Lok Sabha on 7.5.2015

⁸ MHCA 2017, Section 2(a). "*mental illness*" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;"

⁹ Constitution of India. Find at <http://languageinindia.com/april2002/constitutionofindia.html>

¹⁰ Narendra Modi (2015). "PM on Mann kiBaat (Heart Talks): Let's use 'divyaang' instead of 'viklang' for physically challenged people." India Today. 27th December 2015. <https://www.indiatoday.in/india/delhi/story/pm-on-mann-ki-baat-lets-use-divyaang-instead-of-viklang-for-physically-challenged-people-279086-2015-12-27>

¹¹ Salelkar, A. (2016). "Divyang vs Viklang: Disabled Disfranchised but Divine" *The Indian Express*, 2 June 2016. Accessed on 8 Jan 2019 at <https://indianexpress.com/article/blogs/divyang-vs-viklang-disabled-disenfranchised-but-divine/>

¹² "NPRD opposes the term divyang for disabled" https://peoplesdemocracy.in/2016/0131_pd/nprd-opposes-term-%E2%80%99divyaang%E2%80%99-disabled

¹³ Aman Sharma (2016). "Department of Empowerment of Disability Affairs to incorporate the word 'Divyang' in Hindi and English names". *Economic Times*, 22 Oct 2016. Accessed on 10 Jan 2019 at <https://economictimes.indiatimes.com/news/politics-and-nation/department-of-empowerment-of-disability-affairs-to-incorporate-the-word-divyang-in-hindi-and-english-names/articleshow/52408370.cms>

¹⁴ Press Trust of India. (2018). "Railways replace 'viklang' with 'divyang' in concession forms". *The Times of India*, 27 Jan 2018. Accessed on 5 Jan 2019 at http://timesofindia.indiatimes.com/articleshow/62670671.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Recommended list of issues [LoI]

- What efforts are being taken to include all disabling conditions that have made representations to get identified as persons with disabilities?
- What effort has the GoI made to ensure that persons with disabilities are addressed, in various languages of India, without compromising on their rights?

Article 4 - State Obligations

27-28. India ratified the CRPD (2007), however efforts at enabling policy environment are disappointing, even after 10 years. Rules for RPDA2016 have not yet been notified by federal governments. Some national disability legislations (NTA1999, RCIA1999) have not been harmonized. Common laws, laws specific to vulnerable groups have not been harmonized.

29. RPDA2016 provides for disability budgets but gaps are identified - low spending on cross sectoral programs¹⁶, spending on CRPD non-compliant programs, especially institutions and sheltered workshops¹⁷, no monitoring; and non-inclusive designs. GoI makes Private public partnerships with NGOs mandating NGOs to raise their own funding for even basic services and scaling. Persons with high restriction of participation have access to limited schemes, such as pension/ maintenance and are not beneficiaries of general programs.

Annexure - Graph 1 – Overview of heads of expenditure by the responsible Department or Ministry

30-32. A new MHCA2017 has been notified with deprivation of liberty at its core. However, the Act is now without any judicial oversight. The NTA1999 establishes a guardianship procedure over vulnerable groups of persons with disabilities without judicial oversight.

35. The RCI has a great vision and purpose, but has not been harmonized with the CRPD.

42-43. While the initial drafting of RPDA2016 was done with countrywide consultations; alarmingly, the formulation was changed substantially with finalization and legal dressing without participation¹⁸. Other disability legislations, common law amendments, programs, schemes for persons with disabilities and generalist schemes have not evidenced civil society participation.

¹⁵ Venugopal, V (2015). "PM Narendra Modi Suggests use of 'Divyang' for persons with disabilities in his 'Mann ki Baat'. *The Economic Times*, Dec 28 2015. Accessed on 5 Dec 2018 at <https://economictimes.indiatimes.com/news/politics-and-nation/pm-narendra-modi-suggests-use-of-divyang-for-persons-with-disability-in-his-mann-ki-baat/articleshow/50341878.cms>

¹⁶ EQUALS (2016). "How do we Prepare for Budget 2015-16 – Tamil Nadu". EQUALS, Chennai.

http://www.equalscpsj.org/images/Response_to_Tamil_Nadu_Budget_2014-15.docx - accessed on 01.01.2019

¹⁷ibid. More than 80% of the allocation towards persons with disabilities by the Ministry of Health and Family Welfare goes towards running institutions.

¹⁸ The Standing Committee at the time had made a strong recommendation for reviewing the legal capacity provisions of RPDA2016, to respect sector sentiments. However, this guidance was not heeded by the government.

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Lack of DPO engagement is universally expressed by the Indian disability coalitions and organizations¹⁹, especially so in the case of children with disabilities²⁰.

Recommended LoIs

- Provide information of all common and special laws, impacting lives of people that have been harmonized with the CRPD? What efforts have been made to ensure that various programs and policies run by different ministries are responsive to persons with disabilities and that they are consulted in this process?
- Inform the steps which GoI has taken to bring a constitutional amendment to prohibit discrimination on grounds of "disability".

Article 5 - Equality and Non-Discrimination

India's economic growth is appreciable in the last decade. However this growth is accompanied by gaps of economic inequality, social exclusion, multiple discrimination of marginalized groups, including persons, particularly women and children, with disabilities²¹.

45. Indian Constitution prohibits discrimination on grounds of “religion, race, caste, sex, place of birth or any of them”, but "disability" is not a prohibited ground of discrimination by a constitutional amendment.

46. Achieving equality on equal basis with others is being attained piece meal, by DPO efforts at PILs in some areas (e.g. employment, institutional abuse, accessibility). An active judiciary at high court and SC levels, have given some good judgments, e.g. on decriminalizing homosexuality, leprosy and beggary. The Law Commission of India drew up the 256th Law Commission Report^{22, 23} and a draft bill on "Eliminating Discrimination against Persons affected by Leprosy Bill, 2015"²⁴. However, establishing equality in legal, social, customary, service provider and other life processes of all persons with disabilities, especially those in rural, hilly, tribal areas, has been inadequate²⁵.

19 Shalini Nair (2016). "From Viklang to Divyang. NGOs rebut Government, were not consulted". *The Indian Express*, June 2, 2016. <https://indianexpress.com/article/india/india-news-india/from-viklang-to-divyang-ngos-rebut-govt-were-not-consulted-2829786/> accessed on 01-01-2019.

20 M.A.Alwadi, S.R. Baker & J.Owens (2018). "The inclusion of children with disabilities in oral health research: A systematic review". *Community Dentistry and Oral Epidemiology*. DOI: 10.1111/cdoe.12374 accessed on 05-02-2019.

21 Oxfam (2013). "Even if up: Time to end extreme inequality". Oxfam India, New Delhi. Accessed on 15-01-2019, at https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/cr-even-it-up-extreme-inequality-291014-en.pdf

22Written submission by Leprosy Mission Trust India

23Law Commission of India. (2015). "Eliminating Discrimination against persons affected by Leprosy April 2015", *Law Commission of India Report No. 256*, <http://lawcommissionofindia.nic.in/reports/report256.pdf>

24 It also released a Consultation Paper on reform of Family Laws²⁴, making specific observations about discriminatory provisions.

25 Swadhikaar and DRPI (2009). "Monitoring the human rights of persons with disabilities, Country report, Andhra Pradesh". Accessed on 10th December 2018, at <http://drpi.research.yorku.ca/wp-content/uploads/2015/01/IndiaCountryReport.pdf>

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47. Many CRPD rights are viewed as entitlements or as additional benefits by GoI and not as rights. This charity approach shows in budget allocations, spending, lack of implementation, redress mechanisms, and lack of participation by DPO, making "affirmative actions" ineffective.

48. While both RPDA2016 and MHCA2017 have equality and non-discrimination provisions with qualifiers. Both provide indemnity to state actors for non-compliance or even in instances of causing harm.

RPDA2016 established central and state authorities can be removed from public office, if found to be "of unsound mind". MHCA2017 defines equality restrictively vis-a-viz health patients, and not "on equal basis with others".

Neither of the two draft anti-discrimination laws in India, The Anti-Discrimination and Equality Bill 2016, and the Delhi Equality Bill 2015, moved in Parliament, have a clear definition of persons with disabilities.

Recommended LoIs

- What plan does the GoI have, to establish, strengthen and monitor a non-discriminatory regime for all disability constituencies including that provision of reasonable accommodation?

Article 6 – Women with disabilities

50. Constitutional guarantees and RPDA2016 mandates governance to take measures to ensure women and children with disabilities enjoy all human rights, with support for livelihood, childcare, sexual and reproductive health care, land, housing, NREGA and inclusion in various development programmes. MHCA2017 has no special gender based equality provisions, nor NTA1995.

52-54. National Policy 2006, XII Plan commitments

The National Policy provides that, 25% beneficiaries of rehabilitation programs shall be girls and women with disabilities but there are few rehabilitation programs in India.

Women with disabilities experience domestic violence at twice the rate of other women. SR(VAW) observed the inhuman, degrading, torturous treatment of women detained in institutions.

57. The MSJE scheme for financial assistance to women with disabilities, to look after their children is defunct since 2011.

The DEPD gender budget statement presents a decreasing trend from 39% to 28% in 2018-19 of the overall allocation. DEPD has not created a Gender Budget cell for

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transparency in implementation²⁶. Gender and disability sensitivity and disaggregation is missing from all service sector data systems.

Recommended LoIs

- Provide details of efforts made by different ministries on inclusion of women with disabilities in their programs especially in relation to universal implementation and monitoring, with availability of data disaggregation?
- Provide steps taken to address domestic violence against women with disabilities. Provide steps taken to make “safe work place” and action / protection against violence on women with disabilities at work place. How are crimes against women with disabilities recorded, and redressed?

Article 7 – Children with disabilities

58. Constitution and laws

The Constitution guarantees rights of all children to free and compulsory elementary education, protection from unsuitable, hazardous employment; equal opportunities to freedom, health and freedom from abandonment, early childhood care, against an overall policy recognition of children to be in a home environment.

GoI committed to children with disabilities, under UNESCO-Salamanca Statement and Framework for Action, 1994, Biwako Millenium Framework, the CRC, along with national policies²⁷. The RPDA2016 provides for early identification, right to family and addresses a variety of needs of children.

60. National Policy for Children, 2013

The policy focused on child survival, health and nutrition, supported by the National Family Health Survey (NFHS) suggests of children below 5 years, 58% are anaemic and 35% underweight. The GoI²⁸ admits to the high absolute prevalence, yet there is no data on malnutrition and health status amongst children with disabilities²⁹. The Integrated Child Development Services (ICDS) system serving all young children, and inclusion in *anganwadi* (primary) schools, is significantly failing children with disabilities.

61. Early identification Refer to Article 25

²⁶ Meenakshi Balasubramanian, (2016). *Budgeting for Women and Girls, A Policy Brief*. A report for UN Women India. Equals Centre for Promotion of Social Justice EQUALS.

²⁷ A policy environment for protection of children and inclusive education has been there since 1966, under the first Commission for education.

²⁸ Niti Aayog, (2017). "Voluntary National Review Report presented at the UN high level political forum 2017". New Delhi. Accessed on 4 Jan 2019 at http://niti.gov.in/writereaddata/files/Final_VNR_report.pdf

²⁹ Groce, N., Challenger, E., et. al. (2014). "Malnutrition and disability: unexplored opportunities for collaboration". *Paediatrics and international child health*, 34(4), 308-314.

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62-64. Closed-door institutions exist under Health Ministry, Women and Child department, and Juvenile Justice Department. Refer Art.14-16, 19, 26.

65. Despite the Protection of Children from Sexual Offences Act of 2012, (POCSO) violence, rape and assault of girls with disabilities and their lack of access to justice, violation of their dignity, threat to life when reporting the crime, are grave concerns³⁰.

Status of Shelter homes and children with disabilities

AshaKiran, a government run institution in Northern India, is the biggest 'home' for children with disabilities. The CAG Report 2015³¹ documents, "AshaKiran Complex, meant for 'mentally retarded persons', is over-burdened with 970 inmates against its capacity of 350, whereas it has only 215 caring staff against a requirement of 502". The report documents 148 deaths during 2009-14, while various other reports³² over 600 deaths at the facility since 2001. The official response has been to decongest AshaKiran with new institutions³³. Amongst large scale physical and sexual violence against children with disabilities, repeatedly exposed by *The Wire*^{34, 35, 36} guarantees under CRPD is not being fulfilled. The issue of torture of children in India was also raised in the Lok Sabha.³⁷

67. Schemes for children

While schemes are being offered, there is a lack of monitoring, data disaggregation and invisibility of the voices of children with disabilities. Illustratively, the child budget statement of the Union

³⁰ Human Rights Watch, (2018). "Invisible Victims of Sexual Violence. Access to Justice for women and girls with disabilities in India". *Human Rights Watch Report*, New York. <https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities#> accessed on 13-01-2019

³¹ Comptroller and Auditor General of India. (2015). "Report of the Comptroller and Auditor General of India on Social, General and economic Sectors (Non-Public Sector Undertakings) for the year ended 31 March 2014 Government of NCT of Delhi". Retrieved December 24, 2018 from https://cag.gov.in/sites/default/files/audit_report_files/Delhi_Report_2_2015.pdf accessed 13-01-2019.

³²Fizan Haider, (2017). "Horror at Asha Kiran: 600 deaths in 16 years, CAG rapped Delhi govt for poor upkeep". The home for the mentally challenged has reported 11 deaths in the past two months. A Delhi Commission for Women (DCW) visit revealed naked women waiting in queues before bathrooms, human excreta in dormitories." (2017, February 9). Hindustan Times. Retrieved from <https://www.hindustantimes.com/delhi-news/horror-at-shelter-home-cag-rapped-government-for-poor-services-at-asha-kiran/story-304tL7l44uHWhp4RhHYrHK.html> on 01-01-2019

³³ Sourav Roy Burman, (2018). "Will Be Able To House 600, To Take Burden Off Asha Kiran Home: In the offing, a new facility for the mentally disabled". *The Indian Express*. March 6, 2018. <https://indianexpress.com/article/india/will-be-able-to-house-600-to-take-burden-off-asha-kiran-home-in-the-offing-a-new-facility-for-the-mentally-disabled-5087363/>

³⁴ Pandey, A. (2018). "Cars Came for Girls: 24 Rescued from UP Shelter Home, Couple Arrested." *NDTV*, 6 Aug 2018. Accessed on 24 Dec 2018 at <https://www.ndtv.com/india-news/after-bihar-sex-abuse-allegations-at-up-shelter-home-24-girls-rescued-1895830>

³⁵ Wire Report, (2018). "Deoria shelter homes girls 'drugged before being sexually exploited'" *The Wire*. November 19, 2018. Accessed on 24 Dec 2018 at <https://m.dailyhunt.in/news/india/english/the+wire+english-epaper-wireng/deoria+shelter+home+girls+drugged+before+being+sexually+exploited-newsid-101847150>

³⁶ Wire Report, (2018). "Nine Girls Go Missing from East Delhi Shelter Home. The Delhi Commission of Women said the police should investigate the possibility of them being kidnapped by brothel owners". *The Wire*. December 4th, 2018.

³⁷ Ministry of Social Justice and Empowerment (2016). "Shelter homes for mentally challenged children. Unstarred question number 2078 raised at the Lok Sabha". New Delhi. Accessed on 28.12.18 at <http://164.100.47.190/loksabhaquestions/annex/10/AU2078.pdf>

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Government doesn't disaggregate schemes and programs across Ministries and Departments³⁸. With respect to ADIP and the DDRS, only 4% of total allocation is for children³⁹. Some groups of children, e.g. deaf, deafblind and multiple disabilities, are completely neglected in schemes. Also, while some schemes like NIOS work in urban areas, children in rural areas are neglected⁴⁰. Girl children with disabilities face maximum disadvantage within education system.

Recommended LoIs

- Provide details how the right of children to live in the community, in a home-like environment has been realized, including how their choice is ensured while deciding on living arrangements? What safeguards exist to check violence against children within families and institutions? What measures have been put in place for safe access to justice, penalty and redress to affected children?
- Provide steps taken to ensure education of Girl children with disabilities and data be available on the same.

Article 8 – Awareness Raising

68. Statutory obligations

RPDA2016 mandates awareness on protection of persons with disabilities against violence, abuse and exploitation (6), legal capacity (15.1), health, awareness campaigns and duty of authorities; Also, awareness campaigns shall promote inclusion, tolerance, empathy and respect for diversity. Addressing awareness remains patchy, with only opportunistic efforts.

69. Campaigns

In 2016, the GoI revised a scheme for awareness generation and publicity (AG&P Scheme) for creating an enabling environment for disability⁴¹. However, it is unknown how many awareness programs were conducted by beneficiaries also the scheme is not accessible⁴².

There is no effort to translate the CRPD and disability laws in official languages. RPDA2016 has been translated in only 2 out of 21 State languages⁴³. The key texts are not accessible.

Information about schemes and programs are notified only in print media. Budget allocation on awareness has been less than 1.5% of total allocation to specific disability expenditure⁴⁴.

³⁸ India Budget. (2018). "Allocation for the Welfare of Children in the Expenditure profile 2018-19". New Delhi. Accessed on 07.01.2019 at <https://www.indiabudget.gov.in/ub2018-19/eb/stat12.pdf>

³⁹ Demand No. 90 – Department for Empowerment of persons with disabilities - <https://www.indiabudget.gov.in/ub2018-19/eb/sbe90.pdf>- accessed on 07.01.2019

⁴⁰ Written submission by ADD India for this report.

⁴¹ DEPD, (2016). "Revised scheme for awareness generation and publicity by Department of Empowerment of Persons with Disabilities". New Delhi. http://disabilityaffairs.gov.in/upload/uploadfiles/files/agp_english.pdf

⁴² Written submission for this report by Sense India.

⁴³ NCPEDP (2018). "Two years of the RPWD Act 2016 – Status of implementation in States and UTs of India. NCPEDP", Delhi. Accessed on 24.12.2018 at http://www.ncpedp.org/sites/all/themes/marinelli/documents/Report_of_Status_of_RPWD_Act_Final.pdf -

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Moreover, majority of funds comes from the central government⁴⁵; Federal contribution towards it is less than 10% of the total⁴⁶ and a decreasing trend in allocations is seen.

Annexure – Graph 2: A decreasing trend in allocation towards awareness raising.

76. Films and TV

While guidelines have been made, the censor board of films and TV⁴⁷ are not effectively monitoring negative portrayal of persons with disabilities. Also, popular press and media is unregulated in their derogatory and stereotypical depiction, violation of privacy, etc.

Additionally,

- With little effort at awareness raising, government staff have poor view of various disabilities, particularly Deafblindness, mental and psychosocial disabilities⁴⁸.
- Efforts to raise awareness and reduce stigma of Leprosy are not visible.
- The Indian Sign Language Dictionary⁴⁹ has not incorporated words such as reasonable accommodation, UNCRPD, Equal Recognition before the law, persons with disability and many more.
- No efforts are made by GoI on awareness about disability in rural, hilly and forest areas where disability is considered a curse or a moral punishment past misdeeds⁵⁰.

Recommended LoIs

- What efforts have been made to increase awareness on disability rights, especially in rural, hilly and forest areas about various laws, policies, schemes, programs in accessible formats? How many stakeholders, including community members, people in governance, judicial, quasi judiciary authorities, police, health practitioners and others have undergone sensitization programs on disability rights and reasonable accommodation?

⁴⁴ Equals Centre for Promotion of Social Justice (2018). "Compilation of Budget Data". Submission for this report, Chennai. Accessed on 24.12.2018 at <https://docs.google.com/spreadsheets/d/16SswTuscLUvMw012kW72JeyoqvhmFmR3qwTzgU0MkqM/edit?usp=s haring>

⁴⁵Niti Aayog (2017). "India – The three year action agenda 2017-18 to 2019-20". Government of India.

⁴⁶ Ministry of Finance, (2018). "Union Budget 2018-19". Government of India, New Delhi. Accessed on <https://www.indiabudget.gov.in/vol2.asp>

⁴⁷ India Broadcasting Foundation, (2014). "Advisory on portrayal of persons with disabilities on TV shows". Broadcasting Contents Complaints Council, BCCC, New Delhi. <https://www.ibfindia.com/sites/default/files/Advisory1%20Disabilities.pdf>

⁴⁸ Written submission for this report by Sense India

⁴⁹ Special correspondent (2018). "Indian Sign Language Dictionary Released." *The Hindu*, 23 March 2018. Accessed on 23 Dec 2018 at <https://www.thehindu.com/news/national/indian-sign-language-dictionary-released/article23336781.ece>

⁵⁰ Gupta, S., Witte, L., Meershoek, A. (forthcoming). "Dimensions of invisibility: Insights into the daily realities of persons with disabilities living in rural communities in India".

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- Provide information on the monitoring of public media regarding portrayal of persons with disabilities? How many complaints have been received and addressed by competent authority?

Article 9 – Accessibility

Accessibility is basic to a life of dignity for persons with disabilities. Despite 20 years of policy environment for improving accessibility, we are grieved that little has been accomplished across sectors and services.

77. Legislative recognition

RPDA2016 addresses accessibility in physical environments, transportation, communication and consumer goods as a state obligation, including both public and private sector, to be achieved within a timeframe. Other laws say little about accessibility. A PIL from SC directs the government to undertake steps within timeframes to implement accessibility, however implementation is far from achieved⁵¹.

79. The National Building Code India2005

The Ministry of Urban Development (2009) noted that only few States and UT's had adopted accessibility in their buildings bylaws⁵².

The *Model Building Bylaws 2016* with provisions for "differently abled", does not address accessibility in sections such as fire evacuation, parking; nor, while presenting minimum standards. The Model Bye-laws are not harmonized with standards prescribed the Rules under RPDA2016⁵³.

The *Smart Cities Mission* aims at setting up 100 smart cities, regrettably, makes no reference to accessibility in the guidelines⁵⁴.

The *Swachh Bharat Mission*, under which over a million toilets have been built around India, has no plan or targets for accessible toilets. Families are expected to take a top up loan to make their toilet accessible.

⁵¹(2017). Writ Petition (c) No. 243 of 2005, Rajive Raturi vs Union Of India in the SC of India.

⁵² Ministry of Urban Development, (2009). :“Action plan for the MUD for the empowerment of persons with disabilities”, Government of India. New Delhi.

http://mohua.gov.in/upload/uploadfiles/files/actionplan_barrierfree.pdf

⁵³ Diversity and Equal Opportunity Center, (2016). "Review of Model Building Bye-Laws". Bengaluru. Accessed on 18 Dec. 2018 at

<https://www.ncpedp.org/sites/all/themes/marinelli/documents/Review%20of%20Model%20Building%20Bye%20Laws.pdf>

⁵⁴Ministry of Urban Development, (2015). "Smart Cities – Mission Statement & Guidelines". Delhi. Accessed on 13 Dec 2018 at [http://smartcities.gov.in/upload/uploadfiles/files/SmartCityGuidelines\(1\).pdf](http://smartcities.gov.in/upload/uploadfiles/files/SmartCityGuidelines(1).pdf)

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80. There is no further development in setting up of a proposed National Institute of Universal Design, despite the completion of the twelfth plan.

81. Civil Aviation Regulations for persons with reduced mobility⁵⁵ are notified; however, safe carriage of is not yet realized. Persons with disabilities are often denied air travel⁵⁶, or forced to travel without dignity or safety, because of lack of adequate measures⁵⁷.

82. Indian railways prescribed making A and B categories of stations accessible, but by providing only 7 accessibility features. Even this piecemeal solution is unrealized two decades later⁵⁸,⁵⁹. As an accessibility measure, the railways follow a segregated approach of "special" compartments that still needs persons with disabilities to be physically lifted for boarding⁶⁰.

83. While Metro Rail systems are improving on accessibility standards, the feeder buses to reach persons to the Metros are inaccessible.

The law does not require any taxi service or para-transit services to be accessible. Taxi aggregators, despite providing a public service, are not providing accessibility for disabled travellers.

Further, accessibility to persons with disabilities in pedestrian areas is totally absent even with new smart city development guidelines, making use of roads risky.

84. Ministry of Information Technology notified that the "most essential 50 websites" will become Web Content Accessibility Guidelines 2.0 (WCAG) compliant. However, web sites continue to be inaccessible. WCAG compliance is not a part of procurement, tenders and contracts. This compliance is done as retrofitting mode, resulting in inaccessibility during service and maintenance.

Additionally,

⁵⁵ Office of the Director General Civil Aviation, (2014). "Civil Aviation Requirements: section 3 – Air transport: Series 'M' Part I". Issued on 28 Feb 2014 .Delhi. [http://dgca.nic.in/misc/draft%20cars/D3M-M1\(Draft%20May2018\).pdf](http://dgca.nic.in/misc/draft%20cars/D3M-M1(Draft%20May2018).pdf)

⁵⁶ (2016). Writ petition (C) NO. 98 OF 2012. *Jeeja Ghosh & Anr vs Union Of India & Ors* judgement date 12 May, 2016 in the SC of India.

⁵⁷ The News Minute Staff Reporter, (2016). "Disability Rights Activist says Air India made her crawl at airport without a wheelchair, airline denies". *The News Minute*, 31 Jan. 2016. Accessed on 21 Dec. 2018 at <https://www.thenewsminute.com/article/disability-activist-says-air-india-made-her-crawl-airport-without-wheelchair-airline-denies>

⁵⁸ Ministry of Railways (2016). Indian Railways Annual Report and Accounts 2015- 16. Government of India, New Delhi. Page no. 72-74. http://www.indianrailways.gov.in/railwayboard/uploads/directorate/stat_econ/IRSP_2015-16/Annual_Report_Accounts_Eng/18.pdf

⁵⁹ Press Information Bureau, (2018). "Disabled Friendly Stations". Ministry of Railways, GoI. Accessed on 25 Dec., 2018 at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=186323>

⁶⁰P. Rajan, & S. Rai (2016). "Indian railways not compassionate for differently abled travelers, reveals audit". *India Today*. 17 July, 2016. Accessed on 24 Dec. 2018 at <https://www.indiatoday.in/mail-today/story/indian-railways-unsuitable-differently-abled-reveals-audit-329626-2016-07-17>

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- a. The Manual on Public Procurement of Goods 2017⁶¹ mandates procurement of goods as per the BIS standards ⁶² but the BIS has no reference to accessibility or Universal Design of goods and services⁶³.
- b. Accessible India campaign (AIC) was launched to fulfil India's commitment towards SDGs^{64, 65}. It was designed without any DPO consultation. People living in non-urban areas haven't benefited from the campaign⁶⁶. Further, number and locations that have been retrofitted through AIC are not known.
- c. Persons with disabilities are unable to enjoy a wide variety of financial services. The systems and ICTs including web sites⁶⁷, mobile apps and ATMs are discriminatory, as are Customer Care services⁶⁸.
- d. Budgetary contribution towards accessibility goes largely to AIC that this compromises provision of accessibility in other sectors. Disaggregated data suggests that majority of the States do not have a financial commitment towards accessibility.

Annexure - Graph 3: Financial commitments across states in ensuring accessibility

Recommended LoIs

- Provide evidence that GoI has made efforts to improve accessibility, including in rural, hilly and forest areas in India. What inter-sectoral efforts have been made to ensure accessibility compliances, for all modes of public transport, public facilities and services especially the legal, judicial, financial services and post disaster reconstruction etc.
- What are the monitoring mechanisms to ensure that universal design is addressed in the public procurement system for goods, services and works?

⁶¹ Manual For Public Procurement of Goods 2017, GoI, Ministry of Finance, Department of Expenditure - https://doe.gov.in/sites/default/files/Manual%20for%20Procurement%20of%20Goods%202017_0_0.pdf accessed on 1.01.2019

⁶² The Bureau of Indian Standards Act - <https://indiacode.nic.in/bitstream/123456789/2157/3/A2016-11.pdf> - accessed on 1.01.2019

⁶³ Comparison of Different Guidelines for Accessibility of Built Environment in India, A Brief Analysis and Recommendations by DEOC for NCPEDP - https://www.ncpedp.org/sites/all/themes/marinelli/documents/COMPARISON%20OF%20DIFFERENT%20GUIDELINES_2016.pdf – accessed on 01.01.2019

⁶⁴ Department of Disability Affairs, (2015). *Accessible India: Empowering India*. GoI, Delhi. http://disabilityaffairs.gov.in/upload/uploadfiles/files/Accessible%20India%20Campaign_Brochure.pdf

⁶⁵ S. Kumar, (2017). "Accessible India Campaign". *Press Information Bureau*. 9 March, 2017. Accessed on 20 Dec. 2018 at <http://pib.nic.in/newsite/printrelease.aspx?relid=159009>

⁶⁶ Equals Centre for Promotion of Social Justice, (2016). "Accessible India Campaign – Analyzing the strategy behind the Accessible India Campaign of the Government of India. Chennai". Chennai. Accessed on 22 Dec. 2018 at <https://www.scribd.com/document/311578662/Accessible-India-Campaign-An-Analysis>

⁶⁷ Kaur, A. & Dani, D. CSIT (2014). "Banking websites in India: an accessibility evaluation." *CSIT* (2014) 2: 23. <https://doi.org/10.1007/s40012-014-0040-x>

⁶⁸ Center for Internet & Society (2013). *Banking and Accessibility in India*. Bengaluru. Accessed on 12 Dec 2018 at <https://cis-india.org/accessibility/blog/banking-and-accessibility-in-india-report>

- Provide the long-term roadmap for "Accessible India", for ensuring countrywide outreach and budgetary utilization, along with time frame.

Article 10 - Right to life

86. The SC upholds that Right to Life and Liberty as not restricted to 'mere animal existence' but includes a life with dignity. Recently, affirming that "Denial of self-expression is inviting death", the SC brought self-identity and self-determination within scope of Article 21⁶⁹.

Right to Life is not assured by RPDA2016; NTA1999; nor in MHCA2017. However, involuntary institutions continue to be created under the RPDA2016, NTA1999 and MHCA2017, specifically for persons with disabilities. Life within institutions is a threat to life, survival, health, liberty, wellbeing and dignity⁷⁰⁷¹. Refer Articles 14, 15, 16.

System response to persons with disabilities who may be lost, wandering or rendered homeless is extremely poor.

Recommended LoIs

- How many institutions are being maintained or licensed across India by different ministries and departments? How many people are living there, and for how long? How is the right to life being ensured within all these institutions?
- What efforts are being made to strengthen community based system and citizen responsiveness for supporting persons with disabilities, who are at risk by virtue of being lost, wandering, rendered homeless, isolated and so on?

Article 11 - Situations of risk and humanitarian emergencies

88. Legal mechanisms

The right to disability inclusive disaster response can be read under Article 21. The Ministry of Home Affairs created Central (CDMA), State (SDMA) and District (DDMA). However, by 2018, only 29 centers are set up, averaging about 1 Centre per state.

⁶⁹ (2016). Writ Petition (cr.) No. 76 of 2016, Navtej Singh Johar & Others vs. Union of India. In the SC of India.

⁷⁰ Human Rights Watch. (2014). "India: Women with disabilities locked away and abused. End forced institutionalization, sexual and physical violence, involuntary treatment". New York. Accessed on 05 December 2018 at <https://www.hrw.org/news/2014/12/03/india-women-disabilities-locked-away-and-abused>

⁷¹ Koshis, (2018). Ed. Mohammed Tarique. "Report: Social audit of Non-Government and Government Welfare Institutions". Tata Institute of Social Sciences, Mumbai.

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Definition of 'disaster' in Disaster Management Act, 2005 (DMA2005) covers only natural disasters⁷², while conflict zones are seen as a "law and order" situation⁷³.

RPDA2016 recognises the right of persons with disabilities to have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters.

89. National Disaster Response Force

Various mechanisms have been created⁷⁴ for disaster responsiveness. However, where states do not have such mechanisms, the armed forces continue to conduct relief operations, "arriving early and leaving late"⁷⁵.

90. Policies and schemes

Efforts to make DRR inclusive through civil society initiatives⁷⁶ and through draft guidelines by the NDMA on Disability and Disaster⁷⁷ have not yet been adopted.

91. Mainstreaming in preparedness measures

The Model Framework for District Disaster Management Plan has no reference to disabled people⁷⁸. Moreover, they are not consulted, while developing strategies for planning warning, preparedness, evacuation, and reconstruction⁷⁹.

92. Mainstreaming in relief measures

In 2015, TRAI recommended disability inclusion, using phone and video applications for timely access to the Integrated Emergency Communications and Response System (IECRS)⁸⁰. There was no subsequent follow up to implement it.

93 & 94. Mainstreaming in rehab measures including psychosocial support

Access to emergency services, food, refuge, ambulance, fire engines, police, etc. for persons with

⁷² "...a 'catastrophe, mishap, calamity or grave occurrence in any area arising from natural or man-made causes or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of property or damage to or degradation of environment and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area'".

⁷³ Asma Jahangir, Addendum, (2009). "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on Freedom of religion or belief". A/HRC/10/8/Add.3, HRC, 10th Session, Agenda Item 3.

⁷⁴Including the National Executive Committee, National Disaster Response Force, National Disaster Response Fund and the National Disaster Mitigation Fund for disaster responsiveness

⁷⁵Shivananda H. and P.K. Gautam, (2012). 'Reassessing India's Disaster Management Preparedness and the Role of the Indian Armed Forces.', *Journal of Defence Studies*, Vol. 6 No. 1 January 2012, pp. 102-113.

⁷⁶ The Center for Internet and Society, (2013). "Inclusive disaster and emergency management for persons with disabilities". Accessed on 28 Dec 2018 at <https://cis-india.org/accessibility/blog/emergency-services-report.pdf>

⁷⁷ National Disaster Management Authority, (2018). "Draft national disaster management guidelines". GoI, New Delhi. <https://ndma.gov.in/images/pdf/DISABILITY-DISASTER-GUIDELINES.pdf>

⁷⁸ National Disaster Management Authority, (2014). "Model Framework for District Disaster Management Plan". GoI, New Delhi. Accessed on 25 Dec 2018 at <https://ndma.gov.in/images/policyplan/dmplan/DDMP.pdf>

⁷⁹ S. Singh (2016). "Disability inclusive disaster risk reduction in India". For UNISDR. *Prevention Web: The Knowledge Platform for Disaster Risk Reduction*. Accessed on 22 Dec 2018 at <https://www.preventionweb.net/news/view/50454>

⁸⁰Telecom Regulation Authority of India, (2017). "Consultation Paper on Making ICT Accessible for Persons with Disabilities". TRAI, GoI, New Delhi. Accessed on 23 Dec 2018 at <https://www.trai.gov.in/consultation-paper-making-ict-accessible-persons-disabilities>

disabilities have not been prioritized, services and related information being inaccessible. Psycho-social support delivered is based completely on the medical model⁸¹.

Annexure- Case study 1: Persons with disabilities in conflict affected areas

GoI is obliged to provide free legal aid to persons with disabilities; persons under circumstances of 'underserved want' such as being a victim of a mass disaster, ethnic violence, caste atrocity, or industrial disaster. However, the focus of the Legal aid authority (LASA) on such action has been negligible.

Recommended LoIs

- Provide details of all policies, guidelines, programs, and trainings with respect to prevention, mitigation, preparedness, relief, rescue, and mainstreaming of persons with disabilities during disaster and humanitarian crises. Further, what disability specific support is provided to persons with disabilities in such situations including to those at disproportionate risk such as those living in institutions, in shackling, the deafblind, etc.?

Article 12 - Right to Equal Recognition before the law

97. Constitutionally, everyone enjoys recognition as a person before the law. Courts arbitrate this right for people in conflict with law. Persons with disabilities will come into this category because of archaic legal provisions. The postcolonial legacy on incapacity law and custody laws for civil commitment continues in the country.

98. RPDA2016 is non-compliant with CRPD, as persons of "unsound mind" cannot hold public office within disability authorities.

The RPDA2016 provides for equal legal recognition in all aspects of life; however, it provides for "limited guardianship" as a time bound instrument of decision-making making Article 12 unrealized for some. Parents groups of the deafblind, mental, psychosocial and intellectual disabilities demand substituted decision-making⁸².

Annexure - Case study 2: How guardianship is applied in the mental health sector.

NTA1999, not yet CRPD harmonized, limits legal capacity of persons with specified disabilities, providing for plenary guardianship arrangements.

100. Laws needing harmonization

⁸¹ National Disaster Management Guidelines: "Psycho-Social Support and Mental Health Services in Disasters," 2009. A publication of the National Disaster Management Authority, Government of India. ISBN 978-93-80440-00-2, December 2009, New Delhi.

⁸² Written submission by Sense India

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A study of 2000 national laws^{83, 84} showed disqualifiers of *all* persons with disabilities on grounds of incapacity, including persons of 'unsound mind', 'physical and mental defect', 'incapacity', 'physical and mental infirmity', 'deaf-mute', 'blind', 'contagious leprosy', 'leprosy cured', even 'epilepsy'. A Personal Law Amendment Bill 2018 was introduced in Parliament whereby "Leprosy shall be omitted" as a ground for divorce⁸⁵. No other attempt is being made to harmonize the incapacity laws with the CRPD. Doctors practices vary, as there is no regulation of certifying incapacity⁸⁶, and vested interest may be involved in maintaining status quo⁸⁷.

Annexure - Table 3: Incapacity Laws needing harmonization

Banks either allow joint account with the parents or ask for guardianship for many groups of persons with disabilities. National Handicapped Finance and Development Corporation [NHFDG], one of the GoI enterprises giving loans for businesses by persons with disabilities, recognizes only parents' associations; where individual with disabilities work and income goes to the parents⁸⁸.

Recommended LoIs

- What action has been taken for dismantling guardianship, enabling legal frameworks and creating new supportive decision making mechanisms for persons with disabilities to exercise full legal capacity?
- Provide evidence of training of judges, policy makers, politicians, bureaucrats, paralegals, health functionaries, bankers, and parents groups on dismantling attitudinal and procedural barriers to recognizing and respecting the full legal capacity of all persons with disabilities.

Article 13 - Access to Justice

101. Legal aspects

The SC clarified that, access to justice is more than accessibility, and must ensure that judicial

⁸³ Rahul Cherian, Bhargavi Davar, Shivani Gupta, Meenakshi Balasubramanian, Rajiv Rajan, Reshma Valliappan, TN Deepak, and others. (2013). "Legal Capacity in national laws". NCPEDP and Inclusive Planet, New Delhi.

⁸⁴ BV Davar (2012). "Legal frameworks for and against people with psychosocial disabilities". *Economic and Political Weekly*, 29th December, Vol. XLVII No. 52. PP. 123-131.

⁸⁵ Written submission for this report by The Leprosy Mission Trust India, 2018.

⁸⁶ S. Haque Nizamie, Dr Ravi Prakash, Dr Samir Kumar Praharaj , Dr Sayeed Akhtar (2009). "Certification in Psychiatry". *Indian Journal of Psychiatry*. Article 3. <http://www.indianjpsychiatry.org/cpg/cpg2009/article3.pdf>

⁸⁷ National Human Rights Commission (2004). Press Release. "Report sought. Agra Mental Asylum and Government Fake Certificate Expose. Suo Moto cognizance by NHRC". New Delhi. <http://nhrc.nic.in/press-release/report-sought-agra-mental-asylum-and-government-fake-certificate-expose> accessed on 24-01-2019

⁸⁸ National Handicapped Finance and Development Corporation. "Scheme for Parents Association of mentally retarded persons". GoI enterprise. <http://www.nhfdc.nic.in/schemes/schemes-for-parents-association-of-mentally-retarded-persons>

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outcomes are just and equitable⁸⁹. However, judicial activism is not matched by government responsiveness⁹⁰.

102. RPDA2016 mandates access to justice and provision of support measures for accessing justice. MHA1987 also had provision of free legal aid for persons with mental illness. However, contesting involuntary admission, reporting abuses or asking for a lawyer, is treated as a medical problem to be addressed by the psychiatrist and not as justice issue. MHCA2017 also has similar provisions.

103. National Legal Services Authority (NALSA) renewed its free legal aid guidelines for persons with mental illness and mental disabilities⁹¹. The scheme however *presumes* incapacity; recognizes forced treatment *and provides legal aid to implement it*.

105. Accessibility to courts

The Criminal procedure and substantive laws⁹² were amended⁹³ to include accessible procedures, both physical and digital, however compliance is poor⁹⁴. Other than physical accessibility, procedural accessibility and age related accommodations are not addressed. Multiple discrimination, violence against women and children with disabilities, makes it difficult for persons with disabilities to access justice.

Annexure – Case study 4 – Lack of communication, accommodation in the judicial system

In peripheral legal and quasi-judicial authorities (e.g. Police, Commissioners in different sectors, Labour courts, family courts, etc.) accessibility is virtually absent. Only 2 State offices of Commissioner for persons with disabilities have sign language interpreters.

106. Trainings to the judiciary

There is no evidence of trainings or inclusiveness⁹⁵ within the judicial academies of judges, legal aid lawyers and public prosecutors. Their trainings are not accessible.⁹⁶

⁸⁹Referring to the United Nations Development Programme, Access to Justice, Practice Note of (2004), SCC *Imtiyaz Ahmad vs State of UP & Others*, Criminal Appeal nos. 254-262 of 2012. 1 February 2012.

⁹⁰ The ICESCR committee expressed concern on the non-implementation of court decisions by the state. 40th Session, 28th April – 16th May 2008. E/C-12/IND/CO/5; The ECOSOC committee Concluding Observations, CEDAW Concluding Observations of 2007, to mention a few, note barriers to access to justice due to impunity granted to state officials in law.

⁹¹ NALSA (2015). "Legal services to the mentally ill and mentally disabled persons". New Delhi. <http://s/sagoa.nic.in/schemes/lsmimdp.pdf> accessed on 02-01-2019.

⁹² The Criminal Law (Amendment) Act 2013

⁹³ Justice J.S.Verma (Retd.) (2013). Chairman, Law Committee, "Report of the Committee on Amendments to Criminal Law", January 23rd 2013. Accessed on 29.12.2018 at https://www.prsindia.org/uploads/media/Justice_verma_committee/jsvermacommitereport.pdf –

⁹⁴ "Status of physical infrastructure in lower judiciary". Report by Vidhi, Infra.

⁹⁵ National Judicial Academy (2018). Academic Calendar (2018-19). Bhopal. [http://www.nja.nic.in/Academic_Calendars/ACADEMIC%20CALENDAR%202018-19%20\(Thematic%20Framework\)\(25-08-2018\).pdf](http://www.nja.nic.in/Academic_Calendars/ACADEMIC%20CALENDAR%202018-19%20(Thematic%20Framework)(25-08-2018).pdf) accessed on 12-12-2019

⁹⁶ A Human Rights Watch report tracking 17 cases of violence against women and girls with disabilities found large gaps in awareness of the competent authorities.

Data record keeping:

Systems across judicial and quasi-judicial authorities, including National Crime Records Bureaus in India do not record data on persons with disabilities. A 2014 Report of the SR (VAW) noted a consistent lack of disaggregated data on disability.

107. Legal presumption of incapacity is a formidable barrier to accessing justice. Criminal law has been changed from "unsound mind" to "mentally ill person", without however, dismantling the incapacity regime.

Annexure – Case study 4: Misuse of legal guardianship

Additionally,

Barring Maharashtra, every state in India spends less than 2% on the Judiciary. Of the USD 81.5Mn. allocated for the judiciary in the 12th Five Year Plan (2012-2017), only USD 10.9Mn. had been spent in the first year⁹⁷.

Recommended LoIs

- Provide information on the accessibility of the infrastructure, information and communication, including providing reasonable accommodation to provide specific support required to access justice by persons with disabilities within all, judicial, quasi judicial, legal aid and paralegal systems.
- What efforts are taken to disaggregate data and increase efficiency in recording of crime and violence against women with disabilities, redress measures taken, outcomes thereof.

Article 14 - Right to Liberty and security

111 & 112. The legal framework on Right to Liberty is not compliant with the CRPD. Large institutions for the involuntary civil commitment of persons with disabilities exist under different laws and ministries.

In the MHCA2017 judicial oversight of deprivation of liberty has been dismantled, involuntary admission is now under administrative orders. Leprosy law has been repealed. However over 750 residential "leprosy colonies" exist practicing segregation and seclusion.

Authorities in 17 states of India maintain "Beggars' Homes" (under Beggary Prevention Act 1959) that house poor persons with leprosy, elderly, and persons with multiple, physical, sensory and other disabilities. Recently, Delhi High Court decriminalized begging and struck down

⁹⁷ "Status of physical infrastructure in lower judiciary". Report by Vidhi, Infra.

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sections of BPA1959 as unconstitutional⁹⁸. But paradoxically, Beggars' Homes are being converted into "long term care" homes for "mentally challenged"⁹⁹.

A SC Order¹⁰⁰, directed GoI to construct a mental institution where none existed¹⁰¹. By 2009, over 400 private mental hospitals sprang up¹⁰². These institutions practice involuntary commitment of persons with disabilities. There is no independent authority for monitoring these institutions¹⁰³.

113. Under PWDA1995, RPDA2016, and NTA1999, the MSJE practices involuntary civil commitment and "long term care homes" for persons (and children) with disabilities. However no procedure is laid out for involuntary admission: While institutions are touted as "places of residence", they are custodial, with human rights violations exposed routinely¹⁰⁴. Recently, by another SC Order, the MSJE has been directed to start "long term care rehabilitation centres" for "persons living with mental illness"¹⁰⁵.

Criminal wards for the "insane" are also found in India, though little is known about them. Under criminal law (CrPC), while amendments are made to an extent, persons determined to be mentally ill are "unfit for trial" languish in the prison as "accused", not eligible to judicial proceedings¹⁰⁶.

Annexure: Case Study 5: Adjudicating Right to Liberty

Recommended LoIs

- Provide information about persons with disabilities (children, women, elderly, adults) who are involuntarily admitted into "special" closed-door institutions on the basis of the disability? What effort has the GoI made towards de-institutionalization? How many

⁹⁸ Richa Banka, (2018). "Delhi high court decriminalises begging, says provisions violate rights of vulnerable people." *Hindustan Times*. August 9th 2018. Accessed on 01-01-2019, at <https://www.hindustantimes.com/delhi-news/delhi-high-court-decriminalises-begging-says-provisions-violate-rights-of-vulnerable-people/story-zpTjjEawovyw1O96NGhjRN.html>

⁹⁹ Ananya Panda (2018). "Lumpur Beggary home to be renovated for housing mentally challenged in Delhi" *The Tribune*. 26 July 2016. Accessed on 08 December 2018 at <https://www.tribuneindia.com/news/delhi/lampur-beggars-home-to-be-renovated-for-housing-mentally-challenged-in-delhi/626981.html>

¹⁰⁰ (2001) Writ Petition (Civil) No. 334/2001, Re: Death of 25 chained inmates in asylum fire in Tamil Nadu versus Union of India in the SC of India.

¹⁰¹ Davar, Bhargavi V. (2012). "Legal structures for and against people with psychosocial disabilities", In *Economic and Political Weekly*, Vol. xlvii, No. 52, December 29, pp. 123-131.

¹⁰² Affidavits filed by various state governments before the SC in 2009 showed that the number of institutions licensed - in Andhra Pradesh (35) and Chandigarh (38) Maharashtra (101) and Kerala (150).

¹⁰³ A study of 20 Reception Orders (ROs) done in Pune, of people admitted into the Pune mental hospital in 2010 of the Mental Health Act showed many gaps in adjudicating the right to personal liberty. An administrative order, repeated word for word in each and every 20 ROs reviewed, is passed off in all cases of this small sample as a judicial order. The person was not presented in court. No inquiry has been conducted. A person may have been admitted on a certain day. However courts have taken upto 3 months to issue a reception order.

¹⁰⁴ The Expert Drafting Committee submission to MSJE towards the RPDA2016, provided for community based organizations which build values of community, peaceful and non-violent living, right to choice and de-institutionalization. However, this did not find a place in the final law.

¹⁰⁵ (2017). Writ Petition (c). No. 412 of 2016. *Gaurav Kumar Bansal versus Dinesh Kumar and Others* in the SC Order.

¹⁰⁶ I. Freckelton, (2014). "Fitness to stand trial in India: Legacy of Machal Lalung". *Psychiatry, Psychology and Law*. Vol. 21, Iss. 3, pp. 315-320.

institutions have been closed down, and what measures were taken to ensure that all persons with disabilities had diverse opportunities to live a decent life in the community?

Articles 15 & Article 16

114. India has not ratified the Convention on Torture and Optional protocol. No national mechanisms exist for the prevention of torture. Inhuman, degrading, cruel treatments, including torture of persons with disabilities, especially, women and children, and marginalized groups happen regularly.

Physical and sexual violence in shelters for children with disabilities is reported in government facilities^{107, 108, 109}. Concerned authorities are not keeping records and in one instance, not even allowing the conduct of independent survey in the institution^{110, 111}. Some states of India being notorious for child kidnap, abduction¹¹², rape, murder, not allowing the survey to proceed is of concern¹¹³. SC has termed recent findings of NCPCR's survey of 2874 children's homes "chilling". One finding of the study stood out, stating that only 54 of the homes met necessary standards of operation¹¹⁴. Of 185 audited shelters, only 19 maintained resident records.

115. With respect to mental institutions and "rehab centres" for adults, several reports of deaths, involuntary, fraudulent admissions, abuse, over-sedation, kidnap, abandonment, solitary confinement, sexual abuse, chaining, indefinite incarceration and shock without consent / anaesthesia have been reported^{115, 116, 117, 118, 119, 120}. Human Rights Watch recently reported on

¹⁰⁷Pandey, A. (2018). "Cars Came for Girls: 24 Rescued from UP Shelter Home, Couple Arrested." NDTV, 6 Aug 2018. Accessed on 24 Dec 2018 at <https://www.ndtv.com/india-news/after-bihar-sex-abuse-allegations-at-up-shelter-home-24-girls-rescued-1895830>

¹⁰⁸The Wire (2018). "Deoria shelter homes girls 'drugged before being sexually exploited'". (2018, November 19). *The Wire*. Accessed on 24 Dec 2018 at <https://m.dailyhunt.in/news/india/english/the+wire+english-epaper-wireng/deoria+shelter+home+girls+drugged+before+being+sexually+exploited-newsid-101847150>

¹⁰⁹The Wire (2018). "Nine Girls Go Missing from East Delhi Shelter Home". (2018, December 4). *The Wire*, 4 Dec 2018. Accessed on 24 Dec 2018 at <https://thewire.in/women/nine-girls-go-missing-from-east-delhi-shelter-home>

¹¹⁰Ministry of Social Justice and Empowerment (2016). Shelter homes for mentally challenged children. Unstarred question number 2078 raised at the Lok Sabha. Accessed on 28.12.18 at <http://164.100.47.190/loksabhaquestions/annex/10/AU2078.pdf>

¹¹¹Pandey, (2018). *infra*.

¹¹²National Crime Records Bureau (2016) Report "Kidnapping and abduction of persons". <http://ncrb.gov.in/StatPublications/CII/CII2015/chapters/Chapter%2023-15.11.16.pdf> accessed on 14-01-2019.

¹¹³Lahariya, (2018). "Despite SC intervention". *First post*. December 4th, 2018. Accessed on 13-01-2019 at <https://www.firstpost.com/india/despite-sc-intervention-conditions-of-womens-shelters-and-old-age-homes-remain-a-cause-for-concern-in-bundelkhand-5669751.html>

¹¹⁴Legal Correspondent (2018). "Only 54 of 2,874 children's homes received positive reviews, finds NCPCR audit". *The Hindu*, 29 Aug, 2018. Accessed on 5 Jan 2019 at <https://www.thehindu.com/news/national/sc-finds-audit-of-child-shelters-frightening/article24804385.ece>

¹¹⁵The Hindu, (2012). "Mentally – ill patients rescued from illegal treatment centre". 22 March 2012. Accessed on 5 Jan 2019 at <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/article3027286.ece>

¹¹⁶NDTV (2019). "Chennai to become beggar free soon" *NDTV*, 25 May 2019. New Delhi. Accessed on 8 Jan 2019 at <http://www.ndtv.com/video/player/news/chennai-to-become-beggar-free-soon/143406> as found on 1st January 2013

¹¹⁷PUCL (2010). "Dispensable lives, a beggar free 'Singara Chennai'". Report by PUCL fact finding team. Chennai, 7th June, 2010.

¹¹⁸NDTV (2009). "Deaf and dumb girls raped in rehab center in Shimla". NDTV, New Delhi. <https://www.ndtv.com/video/news/news/deaf-and-dumb-girls-raped-62760> accessed on 01-01-2019

inhuman, degrading torturous treatments in Indian asylums¹²¹. The SC and several High Courts have raised an alarm about these violations, as also the National human rights commission and the National women's commission.

Recommended LoIs

- Will GoI allow visits by international human rights special procedures to look into the matter of human rights violations within different medico-legal, rehab and social care institutions including meeting with stakeholders?
- Are there efforts taken to ratify the International Convention of Torture, and to enable a national preventive mechanism for the prevention of torture?
- Provide information on the effectiveness of independent monitoring, redress mechanisms established in case of institution based human rights violations?

Article 17 - Right to Integrity

117. Right to integrity, is ensured in the Constitution.

Coercion in mental health care in India, whether physical (restraints), chemical (medication, shock treatment), institutional (solitary confinement) or psychological (social seclusion), is experienced as a threat to physical and mental integrity of persons¹²².

Forced sterilization and hysterectomies of girls and women with disabilities is common practice. Medical profession has no ethical guidelines on this due to serious non-consideration of patient choice and extant proxy consent of all incapacitated people.

Recommended LoIs

- Provide evidence, what measures are taken to ensure zero violence in community and care settings and efforts to ensure the right to integrity?

Article 18 - Liberty and Freedom of Movement

120. Statutory provisions for issuance of passport

¹¹⁹ Shai Venkatraman (2015). "Dumped, abandoned, abused: Women in India's mental health institutions". <http://www.ipsnews.net/2015/01/dumped-abandoned-abused-women-in-indias-mental-health-institutions/>

¹²⁰ Mumbai Mirror, (2011). "Health chiefs raise alarm on Masina house of horrors". *Mumbai Mirror*.

¹²¹ Human Rights Watch (2014). "Treated worse than animals". *HRW*, New York.

<https://www.hrw.org/report/2014/12/03/treated-worse-animals/abuses-against-women-and-girls-psychosocial-or-intellectual> accessed on 14th January 2019.

¹²² (2010). "Mad Lives India". Babu Trust for Research on Mind & Discourse, Pune.

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Discrimination faced by persons with disabilities travelling abroad is an outcome of inaccessibility of all travel related services such as passport offices, visa services, transport infrastructure, airport facilities, etc.

122. The Registration of Births and Deaths Act (RBD Act)¹²³, procedurally, allows registration of all children. There is however a low birth registration rate for children with disabilities. Their access to schooling and various other needs are not met because they are not registered at birth.

Annexure - Case Study 6: Non-registration at birth of persons with disabilities

Recommended LoIs

- What specific efforts has the government made to ensure that all children with disabilities are registered at birth?

Article 19 - Living independently and being included in the community

123. Constitutional jurisprudence

The constitution prohibits discrimination on the basis of disability, to access public services maintained partly or wholly by state. However, till date, no plan, program, policy or law covers for the right to live in the community.

125. Law for community living

The RPDA2016 and MHCA2017 provide for Art.19 CRPD. But, these laws do not address autonomy and choice of persons with disabilities who live with families or in institutions. Without support system, families see them as a "burden".

No accommodations or accessibility exist within institutions for people with physical disabilities.

MHCA2017 does not provide for de-institutionalization. Refer Arts. 14-17.

126. The state sees closed-door institutions as "places of residence". For example, NTA1999 offers community living but provides institutions after the demise of parents through Gharaunda scheme¹²⁴. The Sahayogi Scheme setup to provide personal assistance provides only trainings for persons and family members, and is woefully inadequate.

127. The *Indira Awaas Yojana* (Pradhaan Mantri Awaas Yojana (Gramin)) has been discussed in Article 28. The attitudinal, discriminatory barriers for social inclusion and challenges in accessing housing goes against the right to live in the community for a number of groups.

¹²³ Chapter (III), Registration of Birth and Death Act, 1969.

¹²⁴National Trust. "Gharaunda: Group home for Adults". Delhi. Accessed on 28 Dec. 2018 at <http://thenationaltrust.gov.in/content/scheme/gharaunda.php>

Housing needs of marginalized groups including those with leprosy, psychosocial disabilities, multiple disabilities remain completely unaddressed¹²⁵.

Annexure – Case study 7: Housing challenges for persons with leprosy

128& 129 Community Based Rehabilitation (CBR)

A majority of persons with disabilities live in rural India; however only 28 % of services reach villages¹²⁶. Only 100 out of 600 districts have any kind of CBR programme¹²⁷. Most efforts are by NGOs with no government support. Presence of CBR programmes in hilly, forest and North Eastern parts of India is negligible. Impoverished, losing dignity and trapped at home, people with disabilities remain dependent on families¹²⁸.

Recommended LoIs

- How does the GoI plan to realize the right to live in the communities, for all persons with disabilities? What is the time frame for effecting this right? What legislative framework will be developed to ensure this right?
- Provide information on housing for persons with disabilities, with suitable information on inclusivity.
- What efforts have been made to scale up CBR across India? Are there any interventions by GoI to develop community based support services and systems and home and environmental accessibility in rural, hilly and forest areas? Is there an intention to adopt 'community based inclusive development' as a strategy for the future?

Article 20 - Personal Mobility

130. Personal mobility ensures autonomy and enables independent living.

The PWDA1995 provided for aids and appliances under "Affirmative action" through the ADIP scheme. RPDA2016 does not see mobility as a right but as an additional benefit.

A recent SC order directs transport registration authorities not to register any car or vehicle that has been altered. This has led to a huge crisis affecting personal mobility of persons with disabilities.

¹²⁵Written submission made by Leprosy Mission

¹²⁶Written submission made by Swabalambi for this report

¹²⁷WHO 2012. Situation analysis of community based rehabilitation in the South-East Asia region. India

¹²⁸Klasing, I. 2007. *Disability and social exclusion in rural India*. New Delhi: Rawat Publication.

131, 132. Public transport for persons with disabilities in rural, hilly, forest areas is negligible. Persons with disabilities travel without concession, and often stranded by private bus drivers. Discriminatory restrictions are placed on persons with leprosy boarding common transport.

135, 136. The government made a Guinness record for the distribution of aids through large camps¹²⁹ under the ADIP scheme. But these camps lack proper design, outreach, evaluation and individualization of services. No after care or maintenance is available after distribution.

The quality and variety of devices, manufactured by ALIMCO, is poor¹³⁰. These are reported unsuitable for the environment that people live in, thus often sold off as scrap¹³¹.

Persons with multiple disabilities express that the amount allocated per beneficiary under ADIP is insufficient for essential equipment. Also a system for customization of the device is not available.

Cochlear implants surgeries have no post-op replacement or repair services. If it malfunctions, there is no further recourse¹³². There is no post-surgery training¹³³.

The budget analysis indicates a stark difference in the allocation per state for assistive devices compromising access to them.

Annexure - Graph 4: Disparity in fund allocation towards assistive devices across States

Annexure - Case study 8: ADIP scheme implementation in schools for students with disabilities in villages

Additionally,

a. Historically, assistive aids and devices have been tax exempt. However under the new Goods and Services Tax, they are exorbitant at 12%. Braille paper, typewriters and watches for the blind are taxed at 5%. Adapted cars are taxed at 18%¹³⁴.

¹²⁹ Times Network News, (2016). "Guinness record of 600 Hearing Aids fitted in 8 hours". *Times of India*, New Delhi. 19 Sept 2016. Accessed on 11 Dec 2018 at http://timesofindia.indiatimes.com/articleshow/54402559.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

¹³⁰Global Disability Innovation Hub, (2018). "Scoping research report on assistive technology". London.

¹³¹ Planning Commission of India, (2013). "Evaluation Study on The Scheme of Assistance to Differently Abled Persons for Purchase/Fitting of Aids/Appliances" (ADIP). Government of India, New Delhi.

¹³²C. Kapoor, (2018). "Delhi: 6 year-old stays deaf due to gaps in government scheme". *DNA*, 3 Dec. 2018. Accessed on 17 Dec 2018 at <https://www.dnaindia.com/delhi/report-delhi-6-year-old-stays-deaf-due-to-gaps-in-government-scheme-2691789>

¹³³Rema Nagarajan, (2017). "Why kids are speechless even after hearing implants". *Times of India*, 19 Sept. 2017. Accessed on 15 Dec 2018 at <https://timesofindia.indiatimes.com/india/why-kids-are-speechless-even-after-hearing-implants/articleshow/60744617.cms>

¹³⁴EQUALS (2017). "Devices that aid India's disabled people are already hard to come by. GST will make it worse". *Scroll in*. Accessed on 12 December 2018. <https://scroll.in/pulse/841224/devices-that-aid-indias-disabled-people-are-already-hard-to-come-by-gst-will-make-it-worse>

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b. An excise duty concession offered by GoI for purchasing cars, is available only to owners with disabilities who drive, discriminating against persons with disabilities who cannot drive and other disability constituencies.

c. Most manufacturers of mobility aids are either small scale or are distributors of imported aids. Incentives to encourage indigenous manufacturers are non-existent.

Recommended LoIs

- Has the GoI established personal mobility as a human right? Provide information that authorities and schemes, such as the BIS, ALIMCO, ADIP scheme have upgraded their services, quality standards, delivery and maintenance mechanisms.
- Would GoI consider tax exemptions and incentivising indigenous industry to make high quality aids, appliances, devices, machinery, technologies, applications, softwares, text readers, cars, etc. available at affordable cost?

Article 21 - Freedom of expression and opinion and access to information

138 &139. Laws and systems

Indian constitution provides that all citizens shall have freedom of speech and expression.

RPDA2016 addresses accessibility of ICT services and goods.

The DEPD has only 4 programs for enhancing information & communication¹³⁵. The GoI allocation is less than 5% of the total budget for the year 2018-19.

Annexure - Table 3: Allocation to information & communication by the DEPD

The National Policy on Universal Electronics Accessibility¹³⁶ of 2013 has not been implemented nor have emergency and essential services made accessible through ICTs, as required by RPDA2016^{137, 138}. Policy on accessibility of telecommunication products and services, including mobile-based services, do not exist. Public consultation regarding ICT for Persons with

¹³⁵Demand No.90, Department of Empowerment of persons with disabilities, MSJE, New Delhi.

https://docs.google.com/document/d/1JTeNrosu774i3yvYy_3i-9TjBbFmIDM2CUkBLh5Uo1w/edit?usp=sharing accessed on 02.01.2019

¹³⁶Ministry of Electronics and Information Technology, (2013). "National Policy on Universal Electronic Accessibility". Government of India, Delhi.

¹³⁷Global Accessibility News, (2016). "Most popular apps inaccessible for persons with disabilities, says study". Accessed on 24 Dec 2018. <http://globalaccessibilitynews.com/2016/11/22/most-popular-apps-inaccessible-to-persons-with-disabilities-says-study/>

¹³⁸Narasimhan, N. (2016). "We tested 18 government apps, and most are not fully accessible for the disabled". *Factor Daily*. <https://factordaily.com/tested-18-government-apps-citizens-found-accessibility-issues-disabled/> Accessed on 24 Dec 2018

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Disabilities has not resulted in any outcome, other than recommendations from Telecom Regulatory Authority of India (TRAI).¹³⁹

An unimplemented Delhi High Court judgement¹⁴⁰ directed authorities to undertake a survey on the status of sign language interpreters and report. However, there are less than 300 sign language interpreters in India.

School Boards

Teaching Braille, sign language and alternative communication systems education introduced by the Central Board of Secondary Education (CBSE), is restricted to "special subjects" meant only for children with disabilities¹⁴¹.

Additional concerns

- a. The deafblind community is unhappy with the negligible efforts promoting tactile sign language by the Indian Institute of Sign Language¹⁴².
- b. TRAI suggests several accessibility features for the set top box (STB) to improve television accessibility¹⁴³. They recommend 50% channel content to be in accessible format by 2022¹⁴⁴. However, implementation is slow, by the Ministry of Information and Broadcasting.

Recommended LoIs

- Is GoI considering recognizing Sign language as an official language?
- What efforts are made by GoI to promote Augmentative and Alternative Communication, to serve the needs of all persons with disabilities, including tactile sign language, arts based expressions, non-verbal modes? Are AAC needs of students addressed in all schools?
- What steps has the Ministry of Information and Broadcasting taken to fulfil their obligation to address accessibility of broadcasting, including TV, STB, all audio visual applications and media?

¹³⁹ Telecom Regulation Authority of India, (2017). "Consultation Paper on Making ICT Accessible for Persons with Disabilities". TRAI. A Government of India enterprise. New Delhi. Accessed on 23 Dec 2018 at <https://www.trai.gov.in/consultation-paper-making-ict-accessible-persons-disabilities>

¹⁴⁰ (2011) Writ Petition (C) No.6250/2010. *The National Association of the Deaf vs. Union of India*, Delhi High Court, Judgment dated 24.11.2011

¹⁴¹ Central Board of Secondary Education, (2018). "Exemptions/Concessions extended to Persons with Benchmark Disabilities for Class X & XII Examinations conducted by the CBSE and Standard Operating Procedure". Circular No. CBSE/COORD/112233/2018, dated 26th September, 2018. A Government of India enterprise. New Delhi.

¹⁴² Written submission by Sense International, towards this report.

¹⁴³ Consultation Paper on Making ICT Accessible for Persons with Disabilities". *Infra*.

¹⁴⁴ The Economic Times, (2018). "TARI Moots measures to make ICT services accessible to differently-abled". PTI. 09 Jan. 2018. Accessed on 19 Dec 2018 at <https://economictimes.indiatimes.com/industry/telecom/telecom-news/trai-moots-measures-to-make-ict-services-accessible-for-differently-abled/articleshow/64919590.cms>

Article 22 - Respect for Privacy

146. Constitution, laws and policies

The right to privacy is implicit in the Constitution¹⁴⁵. However, privacy has remained a grey area¹⁴⁶. Right to privacy is not only about privacy of living at home, but the "right to be let alone"^{147, 148}. There is a disregard of this right by service providers, which results in a loss of respect and dignity for persons with disabilities.

RPDA2016 refers to privacy only for individuals needing support to exercise legal capacity. It is not a universal human right. The NTA1999, even though it defines relationship of guardianship, offers little on privacy.

147. MHCA2017 recognizes the right of persons with mental illness to privacy only while protecting them from cruel, inhuman or degrading treatment. However, the right is conditionally restricted, even though persons with disabilities pass through several procedural gates without choice and consent.

Additionally,

- There is severe loss of privacy in homes, communities and families, especially persons with high restriction in participation, mental, intellectual, multiple and psychosocial disabilities; and people using aids and appliances.
- People accessing general entitlements through use of Aadhaar card (Unique Identification number)¹⁴⁹ have experienced serious invasion of privacy and compromise of personal data¹⁵⁰.
- People, including women and children living in mental, social care, and the hundreds of disability specific institutions have no privacy whatsoever.

Recommended LoIs

- Provide information on legislative provisions that ensure privacy of personal data of persons with disabilities in all settings, including Unique Identification process and

¹⁴⁵ SC, Kharak Singh vs the State of Uttar Pradesh, 1964.

¹⁴⁶ Awasthi, S. (2017). "Right to Privacy is not Fundamental Right: But these cases set a Precedent in India." *The Indian Express*, 17 July 2017. Accessed on 4 Jan 2019 at <https://indianexpress.com/article/research/right-to-privacy-is-not-fundamental-right-but-these-cases-set-a-precedent-for-india-4754352/>

¹⁴⁷ (2009). WP(C) No.7455/2001. *Naz Foundation vs Government Of NCT Of Delhi* Judgment of 2 July, 2009, Delhi High Court.

¹⁴⁸ (2010). W.P.NO.14781 of 2004, *Alarmelu Mangai vs The Secretary To The GoI*, on 27 April, 2010. Madras High Court.

¹⁴⁹ The Aadhar Act 2016. Ministry of Law and Justice. Government of India. New Delhi.

¹⁵⁰ News Staff (2018). "Aadhaar security Breaches". *The First Post*, 25 Sept 2018. Accessed on 7 Dec 2018 at <https://www.firstpost.com/tech/news-analysis/aadhaar-security-breaches-here-are-the-major-untoward-incidents-that-have-happened-with-aadhaar-and-what-was-actually-affected-4300349.html> - accessed on 29.12.2018

disability certification. Define the standards adopted for service provider and support relationships, to maintain the respect and dignity of persons with disabilities.

Article 23 – Home and Family

Sections 9 and 10 of RPDA2016 talks of home and family and reproductive rights. MHCA2017 is non-committal on this human right.

150. Statutory provisions for marriage and divorce

Personal laws are discriminatory against persons of “unsoundness of mind”. The Indian Divorce Act 1869 specifically mentions leprosy and "unsound mind" as grounds for divorce¹⁵¹, ¹⁵².

Annexure – Case study 9: Divorce on ground of mental illness

153. Adoption and custody of children: statutory framework

People with disabilities are considered incapable of parenting and are advised against having children. The Adoption Regulation Act 2017 considers physical, mental and emotional stability of adoptive parents and is judicially interpreted as a disqualifier for adoption. Barriers to adoption and custody of children exist, if a person is found to be ‘of unsound mind’¹⁵³.

Additionally,

Availability of disability sensitive information on relationships, pre-marital counselling, sex education, customary marriage services or inclusion, on equal basis as others, in marriage bureaus, alternative families, etc. are unavailable for persons with disabilities. Women with disabilities are not considered as eligible for marriage and family. Therefore, receiving related sexual and reproductive health services is an everyday struggle for many women.

Recommended LoIs

- Responding to a serious concern about customary control, guardianship and forced decisions on girls and women with disabilities, absent accurate information to enable choice regarding family, marriage and children, what legislative changes and programs has the GoI taken for relieving aggrieved persons from such exclusion?

¹⁵¹ *Pullanbi Dinesan v. Palangadan Jyothi*, MFA. No. 25 of 2003, judgment dated 24 November 2008, Kerala High Court.

¹⁵² One SC case granted divorce on grounds of “mental disorder”, observing that “it is not reasonably expected to live with her”, reinforcing prejudice. *Pankaj Mahajan v. Dimple @ Kajal*, MANU/SC/1145/2011, Civil Appeal No. 8402/2011, judgment dated 30 September 2011, SC.

¹⁵³ A SC judgment in 2009 upheld the right to motherhood of a person with intellectual impairment and obligated the State to provide necessary support to the woman for bringing up the child. However SC clarified that the woman was a person with mental disability, and not ‘mental illness’, therefore not of ‘unsound of mind’.

Article-24- Education

Free education is a constitutional right for all children. The Right to Education Act (RTE) makes education free till 18 years for children with disabilities. The RPDA2016 focuses considerably on education of children.

159. India report states 40% children with disabilities are enrolled in schools, but in reality the enrolment rate is dismal with inadequate measures to retain the enrolled children. At elementary level, the enrolment rate is merely 1.26-1.16% against total. Similarly below 1% are enrolled at secondary level which drops to 0.25-0.27% at high school level¹⁵⁴. Gender Parity Index of enrolled children reflects at 0.74% in year 2011 to 2015.

160. Elementary Education

The RPDA2016 provides for inclusive education but special education system is universal. While the sector is divided on the matter, it is united in demanding that special school system should be under Ministry of Human Resource Development (MHRD) like all other schools, and provide life long learning.

161. SarvaSikshaAbhiyaan (SSA) is the vehicle for implementing RTE. Though the programme has a specific component guiding inclusive education of children with disabilities, allocation towards inclusive education has remained constant at 2% since 2014-15^{155, 156}.

Annexure – Table 4: Allocation towards inclusive education component

The Government initiated the Samgara Shiksha Abhiyan as an umbrella program covering SSA, Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and Teacher education Training program. However, the program has not addressed inclusive design, standards and monitoring of schemes. For instance, home-based education for children with high support needs has no mechanism to ensure standard quality of education¹⁵⁷.

163. Accessibility in schools is confined to ramps and railings. Not having accessible toilets is a big reason for the children with disabilities dropping out. Merely 22.44% schools in India have accessible toilets¹⁵⁸ with Meghalaya having only 1.85% schools with accessible toilets.

¹⁵⁴ UDISE, Education in India, Flash Statistics, 2013-14, 2014-15, 2015-16.

¹⁵⁵ Minutes on the SSA Shagun website on <http://seshagun.nic.in/pab1718.html>

¹⁵⁶ Ministry of Human Resource Development. 'Demand 57' Accessed on 12 Jan 2019 at <https://www.indiabudget.gov.in/ub2018-19/eb/sbe57.pdf>

¹⁵⁷ No formal curriculum is administered under it. Children get educational inputs for only 2 days a week. Many States see this as the only option for children with high support needs violating the right of child to access quality education.

¹⁵⁸ UDISE, Education in India. Flash Statistic 2016-17.

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The Samagra Sikhsha Abhiyan provides books in braille and large print. However, there is no mention of access to other devices and AAC for example, sign language interpretation, tactile communication, arts based expression and personal assistance.

164. A total of 58,76,273 teachers are acquainted with inclusive education, however only 1.32% are formally trained¹⁵⁹. Enrolment of children with disabilities especially with deafblindness is reducing over the years.

166. Secondary Education

RMSA includes components such as Girls hostel, ICT, Vocationalisation of Secondary Education. These components have no mention of students with disabilities as a specific target group. Data on monitoring and systems responsiveness towards students with disabilities is absent.

Annexure – Table 5, Table 6 and Table 7

167 - 169. Beneficiaries of the National fellowship programme has been constant at 200 persons in the years 2015-16 and 2016-17. Data is not available on the physical targets achieved.

180. Learning through AAC

Poor communication modes in the education system exclude persons with deafblindness and Multi Sensory Impairment; NGOs provide 100% support for their education on their own funding.

Recommended LOIs

- Provide information on the plan and budget that the government has for providing "inclusive education" at school and higher learning level, nationwide. What role do DPOs play in the designing, planning, implementation and monitoring of schemes and programs for inclusive education? Is there a plan to bring 'special education' under the purview of ministry of human resource development?
- Are monitoring mechanisms and regulatory authorities established within the Education department to monitor the effectiveness of schemes and programs for inclusion?

Article 25 - Health

181-182 Laws and policies

Right to life includes right to health, nutrition, emergency treatment¹⁶⁰ and health standards¹⁶¹.

¹⁵⁹Thokar, B. A. (2018). "Inclusive Education and children with special needs". *Kashmir Image*, 21 Aug 2018, Accessed on 5 Jan 2019 at <http://thekashmirimages.com/2018/08/21/inclusive-education-and-children-with-special-needs/>

¹⁶⁰ (1989). 4SCC 286, *ParamanandKatra versus Union of India* in the SC of India.

¹⁶¹ (1996). (4)SCC 37 *Paschim Banga Khet Mazdoor Samity and Ors. versus State of West Bengal*.

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PILs¹⁶² judgments suggest that policy changes, closing old programs and roll out of new programs are made without strengthening basic public health ecosystem¹⁶³.

There is no health care law in India¹⁶⁴. The RPDA2016 provides for comprehensive health care, covering gender, disasters, and health care environments. MHCA2017 occupies a silo, treating mental health care independent of health care.

Affirmative action needed in case of Leprosy Eradication is woefully inadequate¹⁶⁵ and upto 0.13mn. cases are registered in the leprosy registry *every year*. The government stance is that leprosy is eliminated, so there is absolutely no policy cover.

183. Inclusive approach to health care is belied by a total absence of disaggregated data on persons with disabilities in all flagship health schemes- National Health Mission, *JananiSurokshaYojana*.

184. Affordable healthcare

Public health expenditure in India remained poor at 1.3% of the GDP¹⁶⁶ increasing marginally in 2016-17¹⁶⁷. 60-75% of health expenditure is "out of pocket" (OPE), which drives the urban and rural poor into debt and penury. Persons with disabilities face many barriers including lack of information, affordability, and limited choice and hostile care environments¹⁶⁸. For rare diseases, OPE for diagnostics and treatment is exorbitantly high.

National Mental Health Programs, where they exist, are drug and "shock" dispensing units. It never achieved scale with grossly inadequate staffing¹⁶⁹. Sparse teams are linked to centralized mental institutions, no continuity of care, and no psychosocial, CBR, arts based, peer support or inclusion services¹⁷⁰.

Annexure- Graph 5: Percentage allocation to persons with disabilities

¹⁶² K. Mathiharan (2003). "The fundamental right to health care". *Indian Journal of Medical Ethics*, 11(4). <http://ijme.in/articles/the-fundamental-right-to-health-care/?galley=html> accessed on 03-01-2019.

¹⁶³ *Jan Swasthya Abhiyan* Alert (2012). "Dangerous shift in health policy". SAMA, New Delhi. <http://phmindia.org/wp-content/uploads/2015/09/Dangerous-Drift-in-Public-Policy.pdf> accessed on 03-01-2019.

¹⁶⁴ PHM_JSA (2018). "Draft People's Health Manifesto". 25-09-2018. SAMA, New Delhi. <http://phmindia.org/2018/09/25/draft-peoples-health-manifesto-2018/> accessed on 05-01-2019

¹⁶⁵ Written submission for this report, Leprosy Mission Trust India.

¹⁶⁶ Ministry of Finance (2017). "Chapter 1: Economic outlook and policy challenges in Economic Survey 2015-16". Accessed on 12 Dec 2018 at <https://www.indiabudget.gov.in/budget2015-2016/es2014-15/echapvol1-01.pdf>

¹⁶⁷ Ministry of Finance (2015). *Economic Survey 2014-15*. Delhi. Vol. II.

¹⁶⁸ Gudlavalleti et al. (2014) "Access to health care and employment status of people with disabilities in South India, the SIDE (South India Disability Evidence) Study", *BMC Public Health*. Accessed on 20.12.2017 at <http://www.biomedcentral.com/1471-2458/14/1125>

¹⁶⁹ Ministry of Health and Family Welfare. Annual report 2017-18 – Chapter 7- Other National Health Programs. Government of India. Accessed on 22.12.18 <https://mohfw.gov.in/sites/default/files/07Chapter.pdf>

¹⁷⁰ Sushovan Roy and Nazish Rasheed (2015). "National Mental Health Program". *International Journal of Current Medical and Applied Sciences*. 7(1): pp. 07-15.

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RPDA2016 has not received any budget allocation towards implementation of services for 2017-18, 2018-19. Specific health requirements of benchmark disabilities find no place in annual budgets.

186. Early intervention for children with disabilities, especially deafblind, and multiple disabilities is non-existent. Only 93 out of 640 districts have District Early Intervention Centres (DEIC). There is no disaggregated data on number of children with disabilities registered.

187. *Rashtriya Bal Shwastha Karyakaram* (RBSK)¹⁷¹ is a program addressing child health for detection and management of 30 health conditions in children less than 18 years¹⁷². The operational guidelines designate ASHA worker to visit every house and provide developmental stimulation to children with developmental delays¹⁷³, but it's not implemented¹⁷⁴.

192. Health insurance for persons with deafblindness at present is only through National Trust's *Niramaya scheme* having limited coverage.

Swavalamban Health Insurance Scheme, for comprehensive coverage is a positive development, but we are concerned about inclusiveness. Persons with disabilities are forced to turn to Private insurance excludes and / or is unaffordable for persons with disabilities.

Recommended LOIs

- Provide evidence of persons with disabilities being beneficiaries of all the health plans, insurance, and services in the public health system. Is there disaggregated data of all health services for persons with disabilities?
- Provide details on how disability inclusion is made an integral part of all their Human resource development programs in the health sector organized by different ministries.

Article 26 - Habilitation and Rehabilitation

195. Law and policy

Rehabilitation is a prerequisite for community inclusion of persons with disabilities however it has not been a state obligation, and left to "economic capacity" of the government. The RPDA2016 considers rehabilitation in areas of health, education and employment for all persons with disabilities. But, rehabilitation services are most frequently being provided by community

¹⁷¹ Ministry of Health & Family Welfare. *Rashtriya Bal SwasthyaKaryakram* (RBSK), Government of India. <https://rbsk.gov.in/RBSKLive/>

¹⁷² Gudlavalleti. M.V.S., John, N., Allagh, K., Sagar. J et.al. (2014). "South India Disability Evidence Study Group". *BMC Public Health* 201414:1125. DOI: 10.1186/1471-2458-14-1125

¹⁷³ Ministry of Health and Family Welfare (2013). *RBSK Operational Guidelines*. Government of India. Accessed on 17.12.18 at

http://www.nhm.gov.in/images/pdf/programs/RBSK/Operational_Guidelines/Operational%20Guidelines_RBSK.pdf

¹⁷⁴ Khurmi, M., Gupta, M., Patle, A., Kaur, P., Mathur, N., Chaudhari, G., Prabhakar, P., Mohammed, S., &Khera, A. (2017). "Improving child survival under National Health Mission in India: Where do we stand?" *Indian Journal of Child Health*, 2(2), 49-54. Retrieved from <https://atharvapub.net/IJCH/article/view/586>

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organizations, without any government support¹⁷⁵. Services enabling girls and women on effective self-care, mobility, communication and other life skilling are conspicuous by their absence¹⁷⁶.

Schemes and programs

201. Deendayal Disability Rehabilitation Scheme (DDRS) gave only 667 grants (includes NGOs) for the period 2015-2017. A majority of the grants given were for special schools. The qualitative outcomes of this fund are unknown. Merely 251 out of 640 districts in India have DDRCs (District Disability Rehabilitation Centres). Many of them are non-functional¹⁷⁷. DDRCs do not have necessary human resources to provide even essential services for persons with deafblindness. As leprosy is considered "eliminated" no mainstreaming program exists for persons with leprosy.

202. Schemes for Purchase/Fitting of Aids/Appliances through ADIP: From 2014-2017, 9,35,583 aids and appliances have been given through camps, government institutes and NGOs¹⁷⁸. Refer Art.20.

204-206. National trust schemes

GoI launched 10 schemes under NTA. Only NGOs registered with the department can apply under these schemes, making it inaccessible to most persons with disabilities¹⁷⁹. Despite schemes, families have no access to support, respite or day care facilities.

208. Training and development of professionals and staff by RCI

The functioning of RCI has been challenged since long for its red tapism, lack of resources, exclusionary policies and overall ineffectiveness in addressing needs in the sector. Lack of human resource for disability rehabilitation is a big issue. Till December 2017, only 1,26,737 persons are registered, majority being special educators.

There is a marginal increase in allocation towards rehabilitation, with a large variation in the funds allocated for rehab services, including some states with zero allocation.

Annexure: Graph 6 and 7

Recommended LoIs

- Provide information on how the GoI has made efforts for de-institutionalization, for all persons with disabilities, and offered CBR measure instead, nationwide. Share

¹⁷⁵WHO (2012). "Situation analyses of community based rehabilitation in the South East Asia Region". India

¹⁷⁶ Centre for Equity Studies (2017): Resisting the Margins Women with disabilities in rural India in India exclusion report 2016. YODA press, New Delhi. Accessed on 26.12.18 at http://defindia.org/wp-content/uploads/2017/07/India%20Exclusion%20Report%202016_low.pdf

¹⁷⁷ Malhotra, D (2018). "Authorities fail to be crutch for 'disabled' Poonch village" The Tribune, 11 Dec 2018. Accessed on 28 Dec 2018 at <https://www.tribuneindia.com/news/jammu-kashmir/authorities-fail-to-be-crutch-for-disabled-poonch-village/696542.html>

¹⁷⁸ Annual Report, Department of Empowerment of Persons with disabilities 2017-18' Infra.

¹⁷⁹ According to verbal submission from Rural Development Trust.

information on how persons with disabilities, especially women and children with disabilities, living in rural, hilly and forest areas have accessed habilitation and rehabilitation services.

Article 27 – Work and employment

210. Equality of opportunity in work and employment

RPDA2016 assures skill development and employment for persons with disabilities; along with reasonable accommodation in private and public sectors, incentivizing the private sector for hiring persons with disabilities at 5% of their work force, other than special employment exchanges.

India has had 3% reservation for over 20 years, now increased to 4%. However, a mere 10% of total jobs are identified for persons with disabilities¹⁸⁰, only 4.36% are filled¹⁸¹. The job identification system is focuses on disability rather than employability.

215. Right to work and employment provisions addresses only formal sector, leaving majority working in informal sectors out.

217. Just and favourable conditions of work is not being realized for persons with disabilities due to inaccessible infrastructure, non-inclusive workplaces, discriminatory process of selection and conditions of medical examination¹⁸². Those with high support needs are working in sheltered workshops run by NGOs, often documented as trainees or interns. Wages are not standardised¹⁸³, promotions, access to trainings, and professional growth is negligible.

221. National Rural Livelihood Mission (DeendayalAntyodayaYojana)

Schemes of Ministry of Rural Development, with 3% reservation, to persons with disabilities underperformed¹⁸⁴. Mahatama Gandhi National Rural Employment Guarantee Act (MGNREGA) provides work and income to rural population. However, during 2018-19 only 19% of persons with disabilities registered actually worked, due to poor working conditions^{185, 186}.

¹⁸⁰Babu, S. (2018) "Disabled and unorganised sector" Counter Currents.org, March 16th 2018. Accessed on 03.01.2019 at <https://countercurrents.org/2018/03/16/disabled-and-unorganized-sector> -

¹⁸¹<http://web.worldbank.org/archive/website01291/WEB/IMAGES/CHAPTE-5.PDF>

¹⁸²<https://www.deoc.in/wp-content/uploads/2018/03/White-paper-on-Employment-updated-27-Nov.pdf>

¹⁸³<http://web.worldbank.org/archive/website01291/WEB/IMAGES/CHAPTE-5.PDF>

¹⁸⁴Rajiv, A & Chari, R. (2015). "Employment Scenario of people with disabilities in India, 20 years of the Disabilities Act 1995". DEOC for NCPEDP. Accessed on 03.01.2019 at <https://www.deoc.in/wp-content/uploads/2018/03/White-paper-on-Employment-updated-27-Nov.pdf>

¹⁸⁵Ministry 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 -

¹⁸⁶Basavaraju R (2014) Inclusion of People with Disabilities in MNREGA, A study in Kolar District of Karnataka - Accessed on 03.01.2019 at <http://www.graam.org.in/wp-content/uploads/2015/11/NREGA-PwD-Final-Ppt-19-July-14.pdf>-

Implementers lack awareness on accommodations under MGNREGA for inclusion¹⁸⁷. Inclusion of persons with psychosocial disability and learning disabilities is disproportionately low¹⁸⁸.

Annexure – Case study 10: Impact of MGNREGA on persons with disabilities

222. Vocational training, while not matching market demands, rehabilitates merely 10,500 persons with disabilities a year excluding non-urban persons¹⁸⁹.

228. Special employment exchanges

By 2013 only 200 were placed out of 94700 Persons with disabilities in live employment register and those placed were mostly orthopedically impaired¹⁹⁰.

230. Promoting opportunities for self-employment and entrepreneurship

Red-tapism within NHFDC makes it difficult for Persons with disabilities to access loans easily. Few people have received loan of over USD 700 (INR 50,000) though there is no legal barrier to higher loans¹⁹¹. Private loan agencies exclude those with mental, psychosocial and multiple disabilities, and women with disabilities.

Recommended LoIs

- What actions has the GoI taken to ensure implementation of affirmative measures provided in law; and that job identification is based on capability and employability, and not impairment? What measures are taken to remove the discrimination in the skill development, vocational training and increase opportunities of self-employment?
- Provide information to evidence the fact that rural employment is inclusive of persons with disabilities nationwide?
- What steps has the government taken to review sheltered workshops, and their impact on improving the lives of persons with disabilities? Has there been any change in their design, implementation and effectiveness to comply with CRPD?

Article 28 – Adequate Standard of Living and Social Protection

237. Constitutional provisions

¹⁸⁷National 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

¹⁸⁸Draft Socio-Economic Impact of Mahatma Gandhi National Rural Employment Act 2005' Infra.

¹⁸⁹World Bank & WHO (2011). 'World Report on Disability'. Geneva.

¹⁹⁰Handbook of Employment Exchange Statistics - Report from Ministry of labour& employment, 2014; Page 6

¹⁹¹Beneficiaries List accessed on NHFDC website at <http://www.nhfdc.nic.in/List%20of%20Beneficiaries>

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The State has an obligation of social justice to all citizens¹⁹². However, the Voluntary National Review submitted to HLPF in 2017, relating to poverty, zero hunger and health has not reported on the commitments or coverage for persons with disabilities¹⁹³.

RPDA2016 mandates appropriate authorities to formulate enabling policies for adequate standard of living, the quantum of assistance being 25% higher for persons with disabilities. Emphasis is placed on community centres, shelters, assistive devices, pension, clean water and sanitation. Specific supports for children women with disabilities have been provided. However, GoI has disregarded ILO recommendations of income safeguarding under adverse conditions¹⁹⁴ and the SR (Disabilities) Report on social protection, particularly the risk of lowered standard of living and impoverishment¹⁹⁵.

239. Indira AwaasYojana (PradhanMantriAwaasYojana - Gramin)

The Indira Awaas Yojana has a 3% reservation on housing, for persons with disabilities. However, only 0.09% has been sanctioned, of which only 63% have been constructed¹⁹⁶. Ministry does not disaggregate disability specific data. Public housing projects have a reservation for some, but not all persons with disabilities¹⁹⁷. Housing for marginalized groups especially those with leprosy, mental, psychosocial, multiple disabilities remain, and single women with disabilities, remain completely unaddressed¹⁹⁸.

240 & 243. Nirmal Bharat Abhiyan

The *Nirmal Abhiyan*, now named "Swachh Bharat Abhiyan"¹⁹⁹ Refer Article 9.

246. Disability Pension

Increase of the Indira Gandhi Disability Pension, a leading National Social Assistance Programs, is only USD 342,300 over the previous year²⁰⁰. GoI contributes approximately USD 4.2 per

¹⁹²"The Directive Principles of State Policy in the Constitution mandates that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

¹⁹³NITI Aayog, Voluntary National Review, submitted to the United Nations in July 2017, Accessed on 28.12.2018 at <http://niti.gov.in/content/voluntary-national-review-report>

¹⁹⁴ International Labour Organization (2012), Social Protection, Floors Recommendation, No. 202 of 2012 dated 14 June 2012. United Nations, Geneva. Accessed on 01-01-2019 at, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R202

¹⁹⁵SR (Disabilities, (2015). "Report of the Special Rapporteur on the Rights of persons with disabilities- On support". United Nations. A/70/297. Accessed on 28.12.2018 at, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/297

¹⁹⁶Ministry of Rural Development (2019). Pradhan Mantri Awaas Yojana Gramin. C-2. Category wise houses sanctioned and completed.

<https://rhreporting.nic.in/netiay/SocialProgressReport/Categorywisehousescompletedreport.aspx> accessed on 10-01-2019.

¹⁹⁷ Express News Service (2011). "Disabled entitled to quota in govt housing schemes: HC". *Indian Express*, January 21st, 2011. Referring to a judgment in the Highcourt of Panjan and Haryana, where Chief Justice Ranjan Gogoi and Justice Augustine George Masih referred to parity of all persons with disabilities. Accessed on 01-01-2019, at <http://archive.indianexpress.com/news/disabled-entitled-to-quota-in-govt-housing-schemes-hc/740404/>

¹⁹⁸Written submission made by Leprosy Mission

¹⁹⁹Press Information Bureau (2014). "Restructuring of the Nirmal Bharat Abhiyan into Swachh Bharat Mission." Government of India, 24 Sept 2014. Accessed on 2 Dec 2018 at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=109988>

month as pension for persons with high support needs. There has been no revision in the quantum of allocation since 2012²⁰¹,²⁰².

248-250. Mainstream social security measures, such as public insurance, do not have specific benefit of these to persons with disabilities.

Additionally,

Despite SC interventions, the plight of homeless poor, especially with mental and psychosocial disabilities, elderly, persons with leprosy, and those with multiple physical and mental disabilities, is grave.

India has not yet initiated any program to ensure quality personal assistant services for the disabled.

Disability Certification, a key document for accessing entitlements, has not effectively addressed the range of support services required by persons with disabilities (high support needs). The draft has left persons with psychosocial disability and persons with sensory issues completely out of its purview²⁰³.

Recommended LoIs

- What efforts are taken to ensure that social protection schemes are inclusive? Are these efforts aligned to international guidelines, e.g. ILOs R202- ensuring adequate standard of living for all persons with disabilities? Does the pension program look at baseline of needs, not just of surviving but of thriving, for all persons with disabilities?
- What measures are adopted to ensure easy access to disability certification, by all persons with disabilities, including those living in rural, hilly and forest areas?

Article 29 - Right to Political Participation

251 - 253. Indian Constitution guarantees suffrage for all citizens. RPDA2016, provides for accessibility in voting, but not the right to vote if declared to be of "unsound mind" by a

²⁰⁰ Centre for Budget and Governance Accountability, Of Hits and Misses – an analysis of Union Budget 2018, February 2018. Accessed on 28.12.2018 at <http://www.cbgaIndia.org/wp-content/uploads/2018/02/Of-Hits-and-Misses-An-Analysis-of-Union-Budget-2018-19-2.pdf>

²⁰¹ Ministry of Health (2012). Office Memorandum – No. J-11015/1/2012-NSAP. GoI. Accessed on 28.12.2018 at <http://nsap.nic.in/Guidelines/dps.pdf> -

²⁰² Ministry of Rural Development. (2014). National Social Assistance Programme – Guidelines. Government of India.

²⁰³ Rights of Persons with Disabilities (Amendment) Rules, (2018). Ministry of Social Justice and Empowerment. Accessed on 3 Jan, 2019 <http://disabilityaffairs.gov.in/upload/uploadfiles/files/Draft%20Rules-high%20support%20needs.pdf>

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competent court²⁰⁴. Similar disqualifications exist to be a Member of Parliament or Councils. State laws (e.g. Panchayati Raj Act 1994, Tamil Nadu) bar persons of “unsound mind” or “deaf mute” to contest in elections.

254. Election Commission of India (ECI) organized a two-day "National Consultation on Accessible Elections"²⁰⁵, towards inclusion of all persons with disabilities. The Election Commission has directed many changes on accessibility during elections. Universal implementation of the changes is poor. Constituencies including the deafblind, persons with multiple disabilities are excluded from elections because of inaccessibility of information, party manifestoes, campaign materials, ballots, etc.^{206, 207}.

258. Disability activism is indeed gathering momentum. But, persons of "unsound mind" are not allowed to form organizations or associations as per the Contract Act 1872, due to incapacity condition applied on the whole constituency.

Additionally,

Disqualifiers in law based on incapacity, exclude persons with disabilities from political participation²⁰⁸, including e.g. Sikh Gurdwaras Act of 1925; Indian Veterinary Council Act of 1984; National Bank for Agriculture and Rural Development Act of 1981.

Recommended LoIs

- What action has GoI taken to ensure the right to suffrage and opportunities to stand for public office, without incapacity disqualifiers by repealing the various incapacity provisions? Provide information on efforts to make the entire electoral process accessible?

Article 30 - Participation in cultural life, recreation, leisure and sports

260. The RPDA2016 provides for participation of persons with disabilities in cultural life, recreation, leisure and sports. MHCA2017 does not mention any mainstreaming aspects.

261. The National policy of 2006 has a list of actions to be taken to encourage these rights. However, accessibility and attitudinal barriers are concerns. e.g. beaches are not accessible and

²⁰⁴ Section 16(1)(b) and 16(2) in the Representation of the People's Act 1950.

²⁰⁵ 3rd July, 2018 in New Delhi, as a part of its Mission to 'leave no voter behind'

²⁰⁶ Mithun, M. K. (2018). "Elections in India still not accessible to persons with disabilities, here's proof." *The News Minute*, 16 Dec. 2018. Accessed on 18 Dec. 2018 at <https://www.thenewsminute.com/article/elections-india-still-not-accessible-persons-disabilities-heres-proof-93460>

²⁰⁷ Hindu Business Line, (2014). "India still years away from an accessible election for people with disabilities", *Global Accessibility News* on 03 April, 2014. Accessed on 20 Dec 2018 at <http://globalaccessibilitynews.com/2014/04/03/india-still-years-away-from-an-accessible-election-for-people-with-disabilities/>

²⁰⁸ Navya, P.K (2018). "Politics and people with disabilities: How the law remains a barrier against advocacy". *The News Minute*, 15 June 2018. Accessed on 19 Dec 2018 at <https://www.thenewsminute.com/article/politics-and-people-disabilities-how-law-remains-barrier-against-democracy-83113>

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where NGOs made effort to make beaches accessible²⁰⁹ these were not further supported by authorities²¹⁰.

262-264. GoI accessibility guidelines for public libraries are unmet. The National Library Mission provides screen reader access for its digital resources²¹¹ but little else.

While travel and tourism are becoming more accessible, however, inaccessibility of tourist places remains a challenge.

266. The Ministry of Tourism star rating requirements needs all hotels to have at least one accessible room however few have complied. Further, a derogatory attitude exists towards persons with disabilities of hotel staff²¹².

The Paralympic Committee of India (PCI) has been criticized by for not offering fair opportunities²¹³ to para-sport persons, reasonable accommodation and support²¹⁴.

Annexure- Case study 11: Poor functioning of the Paralympic Committee of India

Places of worship are not accessible for Persons with disabilities. Further, wheelchairs, calipers, crutches are all not allowed in places of worship in India and dignity is lost in trying to gain access²¹⁵. Religious, cultural attitudes also present barriers to cultural inclusion.

Recommended LoIs

- What has the GoI done to improve accessibility of religious, cultural, leisure, recreation, sports activities especially for persons with deafblindness and persons with multiple disabilities? What are the audit, monitoring and redress mechanisms on accessibility of hotels, libraries, beaches, heritage sites, places of worship, sports facilities and other leisure locations?
- What efforts has the GoI taken to monitor the functioning of the Paralympic Committee of India?

²⁰⁹TNN (2018). "Ramps to aid disabled access beach". *Times of India*, Dec 2, 2018. Accessed on 9 Dec 2018 at <https://timesofindia.indiatimes.com/city/chennai/ramps-to-aid-disabled-access-beach/articleshow/66901295.cms>

²¹⁰Email correspondence by Smitha Sadasivan, Nov. 24, 2019. Subject: "Upsetting news about accessible pathway on Marina Beach", for this report.

²¹¹ National Mission on Libraries, Government of India. <http://www.nmlindia.nic.in/screenreaderaccess> accessed on 08-01-2019.

²¹²Krishnamoorthy, R. (2018). "Hotel denies room to activist with disability". *The Hindu*, 18 Nov. 2018. Accessed on 29 Nov. 2018 at <https://www.thehindu.com/news/national/tamil-nadu/hotel-denies-room-to-activist-with-disability/article20547380.ec>

²¹³Pandey A. (2018). "Paralympic Committee of India playing dirty politics, alleges Asian Championship medallist". *India Today*. 3 Oct, 2018. Accessed on 6 Dec 2018 at <https://www.indiatoday.in/sports/other-sports/story/paralympic-committee-of-india-playing-dirty-politics-alleges-asian-championship-medallist-1354713-2018-10-03>

²¹⁴Hussain, S.,(2017). "Controversy over escorts for Para-Asian games." *Times of India*, 27 Sept. 2017. Accessed on 09 Dec 2018 at <https://timesofindia.indiatimes.com/sports/more-sports/others/controversy-over-escorts-for-para-asian-games/articleshow/65974993.cms>

²¹⁵Montieri, L. (2017). "Manguesh temple denies entry to 17-year-old wheelchair user" *Times of India*, 6 Nov. 2017. Accessed on 25 Dec. 2017 at <https://timesofindia.indiatimes.com/city/goa/manguesh-temple-denies-entry-to-17-year-old-wheelchair-user/articleshow/61527366.cms>

Article 31 – Statistics and Data Collection

281 & 282. Significance of statistics

Reliable data on status of persons with disabilities is a vital prerequisite for policy making. However, a severe lack of data is evident in all areas of inclusion. Disability disaggregated data is hardly being generated²¹⁶.

RPDA2016 provides for surveys and data in two sectors. But, a provision mandating statistics and data collection that could be internationally compared, is not provided for. No mandate exists across systems, to disaggregate administrative, programmatic and financial data²¹⁷.

283. The NSSO has recently circulated a survey questionnaire to collect data on persons with disabilities²¹⁸. The failure of Kerala survey shows that the survey will not yield accurate quantitative data. The methodology is not tested across constituencies and geographies²¹⁹.

284. Terms used to designate the levels of disability in Census 2011 are not in compliance with human rights standards, also capturing change over a time period will be challenging.

As a result of unclear definition, there is huge discrepancy in statistics on the population of persons with disabilities among different reports and poor needs estimates across sectors.

Additionally,

The India - 3-year action agenda of the NitiAayog has identified obtaining realistic estimate on the number of persons with disabilities as first step towards empowering persons with disabilities²²⁰. However, financial documents of the various states revealed that only 2 out of 37 States and UT's have allocated resources for survey on disability²²¹.

Recommended LoIs

- What efforts are taken to ensure that the next census includes questions that generate internationally comparable data on persons with disabilities?
- What specific measures are taken to disaggregate administrative and financial data on persons with disabilities concerning various ministries and departments?

²¹⁶ Written submission for this report from Women with Disabilities Network India.

²¹⁷ Wada Na Todo (2018). "Citizens Report on 4 Years of NDA Government – Promises and Reality, Civil Society Initiative". Delhi. Accessed on 25.12.2018 at <http://wadanatodo.net/wp-content/uploads/2018/05/Citizens-Report-on-4-years-of-NDA-Government.pdf>

²¹⁸ NSSO Socio Economic survey (2018). Schedule 26 – Survey of Persons with Disabilities. Accessed on 25.12.2018 at <https://drive.google.com/file/d/1gIDSYQffOp0sO8vECMY6nr3Yd4fcbQMZ/view>

²¹⁹ Written submission for this report by Disability Rights Alliance, Chennai.

²²⁰ Niti Aayog (2017). "India – Three year action agenda" Government of India. Accessed on 25.12.2018 at http://niti.gov.in/writereaddata/files/coop/India_ActionAgenda.pdf

²²¹ Written submission for this report by EQUALS, Chennai.

Article 32 – International Co-operation

288. In India, programs of awareness, research, provision of basic services for persons with disabilities is led by civil society, with national and international partnerships, including financial aid.

289. DFID is financing Inclusive Education under SSA, and World Bank, poverty alleviation programs. However GoI commitment for parity are not being met for persons with disabilities under such programs.

292-294. The UN Special Rapporteur's legal analysis notes that the Indian FCRA laws do not confirm to International Standards²²². NGOs, CBOs and DPOs provide the bulk of essential and ancillary services, without any monetary support from GoI. They face multiple challenges in accessing foreign funding. However, firewalls exist to block funding contracts and receipts at every step, through multiple, overlapping regulations and authorities, including bank regulation, bringing surveillance to the doorstep of organizations. FCRA law has not made it appealing for donor and funding agencies to work in India²²³. Number of organisations receiving foreign funding has declined. Foreign contributions came down from USD 184.3Mn. 2013-14 to USD 123Mn. in 2014-15.

Additionally,

Infrastructure and development projects carried out in India through international co-operation are not monitoring accessibility outcomes.

Recommended LoIs

- How does GoI ensure that infrastructure projects supported by multilateral and bilateral agencies give needed emphasis on procurement of universally designed goods, services and works?
- What steps GoI will take, to make a more enabling system for international organizations to fund projects related to disability rights awareness, community inclusion and welfare?

Article 33 National Implementation and Monitoring

302. Focal points and coordination mechanisms

²²² Maina Kiai (2016), SR-Right to freedom of Peaceful Assembly and of Association. Report of the SR (FPAA) "Analysis of international law, standards and principles applicable to the foreign contributions regulation act 2010 and foreign contributions rules 2011". Submitted to GoI on April 2016.

²²³ National CRPD coalition consultation, 13-14 December, Hyderabad, 2018.

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The Department for the Empowerment of Persons with Disabilities is the nodal Department but it runs a segregated system for inclusion, with poor co-ordination with other ministries and departments; and also, about a pattern of not consulting with DPOs on various matters at design, policy, plans, and programs.

303-305 Central and state coordination committees

RPDA2016 has increased the number of members with disabilities in all committees. RPDA2016 provides that, one of the two commissioners under the chief commissioner for persons with disabilities must be a disabled person. But neither of these provisions have been realized. At any time, there are vacancies, transfers or "additional portfolios" with respect to Disability Commissioners in State and UT.

Additionally,

No independent mechanism has been setup to promote, protect and monitor implementation of the Convention. The NHRC is not an independent body in India and it does limited work in the area of disability rights.

Recommended LoIs

- Provide specific information to demonstrate DEPD efforts to establish systems, staffing, policies, programs and monitoring system for the protection and promotion of disability rights and inclusion in the activities undertaken by it and also in all other ministries as per RPDA2016.
- Provide details how many persons with disabilities and their organizations were consulted in the planning, implementing and monitoring process of making, implementing and monitoring those initiatives.

Annexure

Introduction

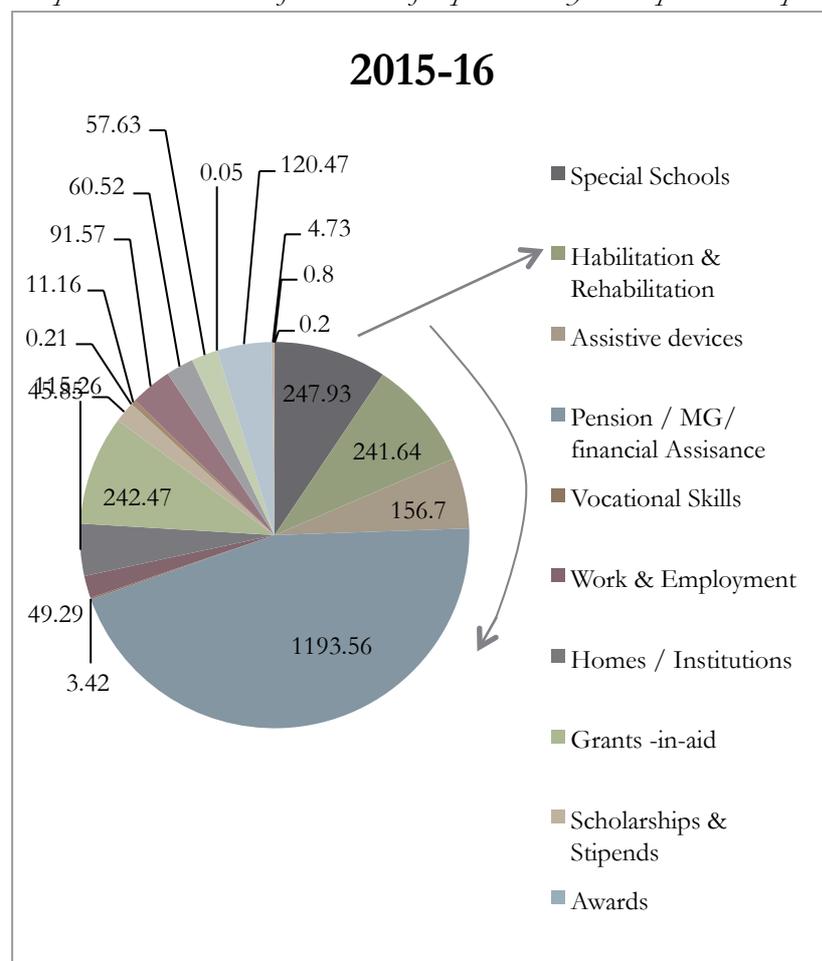
Table 1: Specific allocations towards persons with disabilities by Union Government.

Year	Specific fund allocated to persons with disability as available in the demand for grants (USD Million) ²²⁴	Percentage to the Total Disbursements	Percentage to Social Services
2016-17	119.61	0.02	1.52
2017-18	223.26	0.02	1.46
2018-19	257.54	0.02	1.73

Source: Ministry of Finance 2018, seen on <http://www.indiabudget.gov.in/ub2018-19/afs/afs4.pdf>.

Article 4

Graph 1: An overview of the heads of expenditure by the responsible Department or Ministry

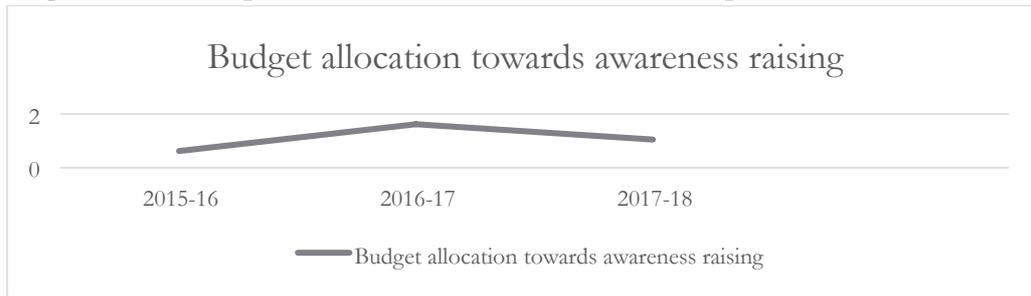


Presented by Equals Centre for Promotion of Social Justice, Chennai, 2018.

²²⁴ Conversion done on Money control at <https://www.moneycontrol.com/mccode/currencies/> on 10 Feb. 2019

Article 8

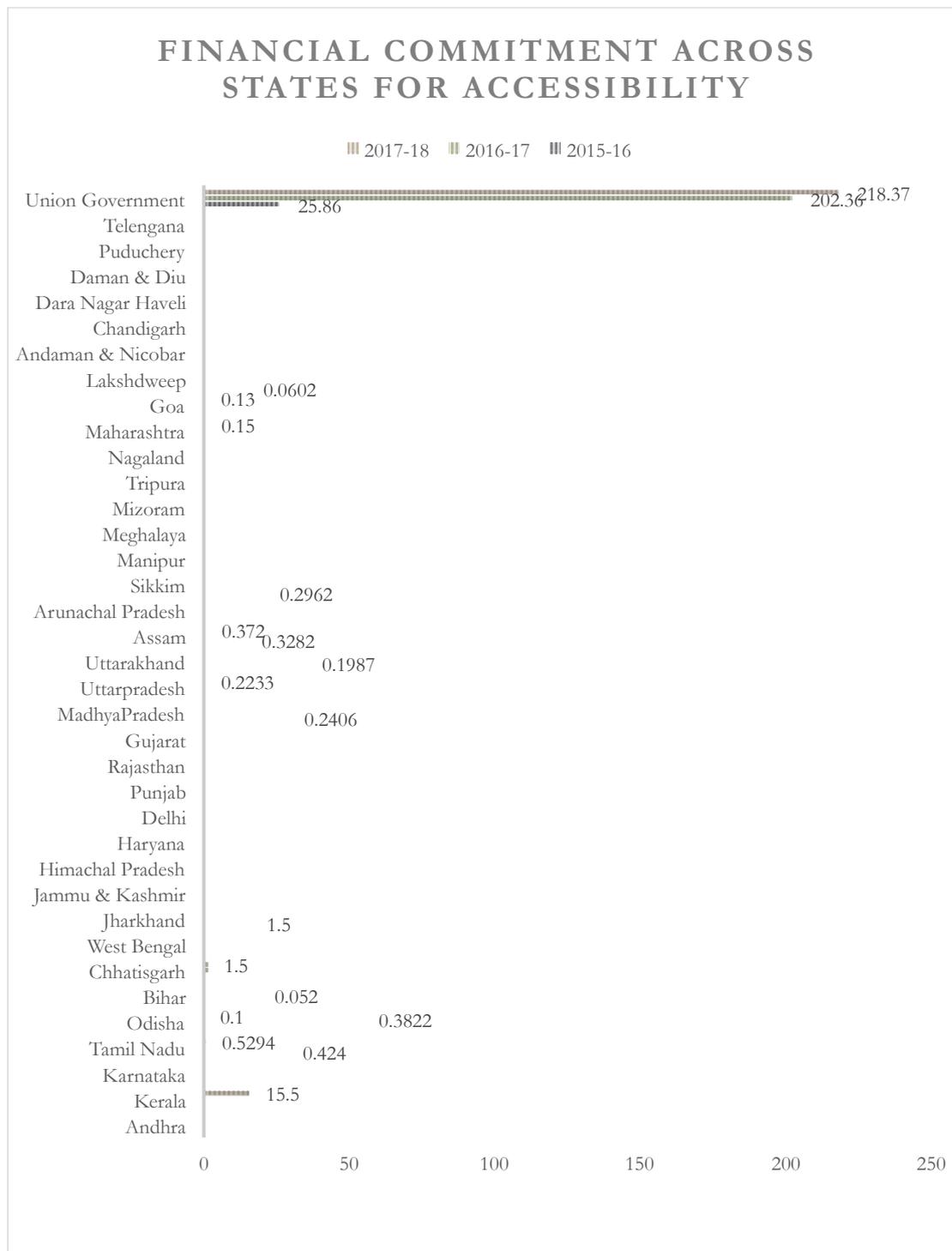
Graph 2: A decreasing trend in allocation towards awareness raising.



Presented by Equals Centre for Promotion of Social Justice, Chennai, 2018.

Article 9

Graph 3: Financial commitments across states in ensuring accessibility



Presented by Equals Centre for Promotion of Social Justice, Chennai, 2018.

Article 11

Case study 1: State of persons with disabilities in conflict affected areas

India has several States affected by armed conflict and persons with disabilities face heightened vulnerability. In Kashmir there is a reported trend of persons with psychosocial and learning disabilities shot at by Indian armed forces. It is also reported that many of these victims have been attempted to be passed off as terrorists by the Indian Army and Police. Doctors without Borders released a report (2015)²²⁵ on mental health conditions in Kashmir in 2015 wherein they estimated that nearly 1.8 million adults (45% of the adult population) in the Kashmir Valley are experiencing symptoms of mental distress, with 41% exhibiting signs of probable depression, 26% probable anxiety and 19% probable PTSD. The report also highlighted the bio-medicalisation of mental health care and treatment in the region by findings from the survey which showed that 11% of Kashmiri adults were taking benzodiazepines and awareness about alternatives like counselling etc. were low. The overall number of persons with disabilities in the Kashmir region have increased significantly which has been attributed to the use of pellet guns for crowd control, though they have little or no access to any rehabilitation, schemes or support, and this is only worse in the case of Kashmiri women.

Case study from Equals Centre for Promotion of Social Justice, Chennai, 2018.

Article 12

Case study 2: How guardianship is applied in the mental health sector

Jaydeep Ladkat²²⁶ of Wanawadi, and his siblings obtained guardianship of person and property of his father, Vitthal Ladkat, on grounds of 'mental illness' from a competent court. Within 6 months of this order, Jaydeep Ladkat also got the court to notice the 'mental illness' of his mother, after institutionalising her the same year in the same institution for 4 months. His mother was diagnosed consecutively with 'occasional depression', 'major depression', 'schizophrenia' and 'paranoid schizophrenia', the same diagnoses applied on the father. Properties involving hectares of prime land and city properties were involved. Even so, the court did not make further inquiries upon receipt of identical doctor certificates, did not have any independent examination of the parents and pronounced guardianship. In both these cases, a private mental asylum owner from Pune city has been involved in the certification process and institutionalisation.

A reading of judgments in 2011 on 'guardianship' suggests that district courts are regularly giving out guardianship as a routine administrative procedure and not arbitrated as constitutional matter. In a judgment of 18/11/2011, the district court noted that 'Certainly there needs to be someone to take care of this fellow', handing over the person of Bhimaji Kulkarni, person with mental disability, to his brother. In the sample of 10 cases reviewed, two cases, a person of 'mild

²²⁵Doctors without boards, (2015). "Kashmir mental health survey – Report 2015". New Delhi. Accessed on 30 Dec 2018 at

https://www.msfindia.in/sites/default/files/201610/kashmir_mental_health_survey_report_2015_for_web.pdf

²²⁶ District court of Pune, In civil suit No. 1640 of 2009 M.A.NO : 681/2009, under MHA 1987²²⁶, Judgement Date: 31-01-2011; Civil suit NO: 680/2009, Order date 18/06/2011

mental retardation’ was found to be ‘mentally ill’ by the court and granted guardianship under the MHA. Even though MHA specifically excludes MR, section 52 of MHA on guardianship was applied. The judicial review mechanism has been largely dysfunctional as guardians do not go back to court for revoking the arrangement, and there is no independent regulation.

Case study from Bapu Trust, Pune, 2017

Table 2: Incapacity Laws needing harmonisation

Incapacity Laws needing harmonization		
1.	Army Law	Army Act, Air Force Act, Navy Act, Coast Guard Act, Border Security Force Act, Assam Rifles Act, Sashastra Seema Bal Act, Works of Defence Act, Indo Tibetan Border Police Force Act
2.	Criminal Law	Criminal Procedure Code, Indian Penal Code and Evidence Act
3.	Family law	Deny capacity to marry, stay married, to adopt, to inherit, terminate a pregnancy, choose a pregnancy, incapacity to acquire new domicile,
4.	Work & Employment, higher education	North Eastern Hill University Act, The Visva-Bharati Act, Airports Authority of India Act, Air and Water Prevention and Control of Pollution Acts, International Airports Authority Act, Road Transport Corporations Act, Municipality and Cantonment legislations, Panchayati Raj Acts, Waterways Authority of India Act, Coastal Aquaculture Authority Act, Food Corporation Act, Warehousing Corporations Act, Spices Board Act, and various Rural Development, Finance, Banking, Credits and Taxation laws, including the Reserve Bank of India Act Telecom Regulatory Authority of India Act, Gurudwara Act
	Professional Registration	Architects Act, Bombay Civil Courts Act, Judges Inquiry Act
	Holding Public office	Commission for Protection of Child Rights Act, Consumer Protection Act, PreNatal Diagnostic Techniques Act, Displaced Persons Claims and Compensations Acts, Safai Karamcharis Commissions Act, Commission for backward Classes Act, Patents Act, Advocates Welfare Fund
	Contract	Contract Act, Registration Act
	Land and Taxation Law	Land Revenue Act, Wealth Tax, Income Tax, Gift Tax Act and a number of laws for owning, cultivating land

Presented by Inclusive Planet and NCPEDP 2012.

Article 13

Case study 3 – Lack of communication accommodation in the judicial system

“Speech and communication are key in courtroom discussions. But if a speech and hearing impaired person is involved, the system becomes mute to his or her needs. The gamut of communication needed in a court of law presupposes the ability to communicate clearly and comprehensively. The need for communication, with lawyers, judges, witnesses and in writing, is so great that in fact most hearing persons are daunted at the prospect of going to courts and dealing with these situations. It is remarkable that in the 60 years of Independence and the active Indian Jurisprudence and the plethora of heinous crimes against deaf persons, no judge has ever felt the need to write a judgment including the right to interpreters and the rights of the deaf person in the justice system.”

Case study from Equals Centre for Promotion of Social Justice, Chennai, 2018.

Case study 4: Misuse of legal guardianship

Bula, a young woman with intellectual disability, was married to a man who worked in an art studio run by Bula’s family i.e. mother and brother including his family. They all were living in the same house owned by Bula’s parents. Mother made a will where a part of the house was given to Bula along with some cash savings. After mother’s death Bula’s husband took legal guardianship of his wife through court. He sold the property that was in Bula’s name and took his wife to some unknown place and no one knows what happened to Bula after that. The case was reported to commissioner disability but no follow up was done by the commissioner’s office.

Case study from Babu Trust, Pune, 2017

Article 14

Case Study 5: Adjudicating Right to Liberty

Upon finding HasanGalib wandering on the streets of Kakdwip, West Bengal, local police admitted him to Lumbini Park Mental Hospital, Kolkatta. In six months, although he was officially declared fit to go out into the world, the psychiatrist declined to discharge him as there was no one to 'receive' him. Hasan filed a case against the state in the lower court, which did not move forward. A case of criminal revision under constitutional law was filed in the Calcutta High Court. Hon’ble Judge at High Court reprimanded the Superintendent and the Medical Officer for their callous attitude. He expressed his mistrust on the documents furnished by the hospital and disregarded the report of the concerned Medical officer of the hospital. He appointed *amicus curiae* for a detailed case history, present condition of Hasan, etc. Through several subsequent proceedings of the High Court, and a successful media campaign by a local NGO, Anjali, Hasan was finally released. Not many people admitted into mental institutions and other custodial institutions in India are as lucky as HasanGalib.

The MHCA dismantles the judicial arbitration of Article 21, making involuntary commitment to the mental institution, a routine administrative matter. It provides for deprivation of liberty and institutionalization without consent of the individual (Secs. 89-90). The 'advance directive' procedure is cancelled if a person is determined to be in a 'very high support' need.

Case study from Anjali Human Rights, Kolkata.

Article 18

Case Study 6: Non-registration at birth of persons with disabilities

BS is a 30 year old woman, unmarried, and dependent on her 2 brothers and their family, who have lived in a slum over many decades. She is a 'little person' and has mental disability. She rarely steps out of the house and when she does, she is teased and taunted by the neighbours. She has never visited a public hospital or a doctor for any kind of treatment for any problem, and has never been evaluated. She does all the work in the large household, including cleaning, cooking, washing, cutting, etc. and enjoys household work. She is very particular about the clothes she wears and cares about how she looks. She is unemployed and never went to school. Her birth was not registered and her name is not included in the family's ration card.

Case study from Bapu Trust, Pune, 2012.

Article 19

Case Study 7: Housing challenges for persons with leprosy

The government has failed to address housing needs of persons with leprosy all together who because of deep stigma are shunned from their homes and communities, ousted from their homes and are forced to live in leprosy colonies. There are more than 1000 colonies where families with persons affected by leprosy are forced to live due to the intense stigmatization. The occupants of homes in these colonies have lived their for several years, but they are not granted land deeds in their name and they live in constant fear of being thrown out of here to as these settlement as seen as unauthorised by government agencies. Being unauthorised from the governments view, these colonies lack basic public facilities and accessibility.

Case study from Leprosy Mission, India, 2019

Article 20

Case study 8: ADIP scheme implementation in schools for students with disabilities in villages

A visiting doctor does Screening/Identification of children with disabilities in government schools once a year. Identified child with vision, hearing or any physical impairment, are listed in the health register and referred for further examination in a camp held by the Government at the Block level. The assessment camp at the Block level conducted once a year is primarily done to assess and provide appropriate aids and appliances as well as to provide identity cards to the children with disabilities. The gaps found in this system are:

1. No one takes responsibility for the follow up of ensuring that the child is taken for the camp and assessment is done - neither the health department, nor the education department nor the parents.
2. After assessment is done in the camp, if a particular aid or appliance is recommended, the child's measurements are taken and the aid is issued to the child only in the camp the following year by which time the child would have out-grown the aid.

Case study from ADD India, Bengaluru, 2018

Graph 4: Disparity in fund allocation towards assistive devices across States



Presented by Equal Centre for Social Justice, Chennai, 2018.

Article 21

Table 3: Allocation to information & communication by the DEPD

Name of the programme / Scheme	2016-17 (USD Millions)	2017-18 USD Millions)	2018-19 USD Millions))
Information & Mass Education Cell	5.59	6.99	4.89
Support/ Modernisation of Braille presses	1.27	1.39	1.39
Research related to technology products related to disability	0.04	0.14	0.14
Indian Sign Language Research and Training Centre	0.42	0.63	0.70
Total	7.32	9.16	7.13
Total Allocation of the Department	108.13	119.66	149.76
Percentage allocation to information and communication in comparison to the total allocation	6.77	7.66	4.76

Source: Ministry of Finance 2018, seen on <https://www.indiabudget.gov.in/ub2018-19/eb/sbe90.pdf>

Article 23

Case study 9: Divorce on ground of mental illness

One marriage in Pune was annulled by a lower court on the basis of a finding of ‘*moderate depressive episode with somatic syndrome*’²²⁷. The history of this case shows that the husband filed nullity of marriage petition on ground of insanity and fraud due to nondisclosure, in Pune family court. He alleged that his wife has had ‘as many as 6 previous sexual relationships’ and had kept him in the dark about it. Not revealing these past relationships was construed by the lower court as ‘deception’, the ground of ‘insanity’ admitted and the marriage was rendered null and void. The husband had alleged the woman’s ‘abnormal’ behaviour (promiscuity) and some other events (crying spells, poor sleep). He alleged that her ‘vaginal opening was enlarged and vaginal muscles laxed’. After 2 independent gynaecologists found that the vaginal muscles were indeed ‘laxed’, the gynaecologists directed that *both* of them should see a psychiatrist. The judgment was squashed by the High Court, which however engaged in serious violation of the right to bodily and mental integrity and the right to privacy. The woman was repeatedly sent for different gynaecological tests and psychiatric tests. After several subsequent referrals to a variety of doctors, she was diagnosed with ‘severe subjective distress’ and ‘moderate depression with somatic complaints’. Tussle between two courts and between 2 psychiatrists or more resulted in serious violations of her autonomy and self determination, right to bodily and mental integrity, consent to medical interventions, and right to privacy.

Case study from Babu Trust, Pune, 2016

²²⁷ Mr. Vinand Vilas Arabale versus Ms. Shilpa VinandArabale, Petition A.NO.487/2011, for annulment of marriage under section 12(1)(c) in the court of Principal Judge, Family Court of Pune, at Pune. Judgment delivered on 29/07/2012

Article 24*Table 4: Allocation towards inclusive education component*

Year	Allocation to Inclusive Education USD Millions	Allocation to SSA USD Millions)	Allocation to Inclusive Education as a percentage to overall allocation to SSA	Increment in allocation to IED from the previous Year (USD Millions
2013-14	63.11	3471.23	1.81	
2014-15	70.81	3364.46	2.10	7.71
2015-16	76.58	3063.82	2.49	5.77
2016-17	80.16	3035.04	2.64	3.58
2017-18	76.24	3289.01	2.31	(3.92)

Source : Department of School education and literacy, 2018. Seen on <http://seshagun.nic.in/pab1718.html> & Ministry of Finance, 2018. Seen on <https://www.indiabudget.gov.in/ub2018-19/eb/sbe57.pdf>

Table 5: Disability analysis of girls hostel provision under RMSA

Purpose	Mention of persons with disability as a focus group	Facilitators	Gaps
Construction and running of 100 bedded girls hostel in the 3479 educationally backward blocks	×	Link between IEDSS and Girls hostel scheme (ref: http://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/EDU.pdf - 5.2.1 (V) There is a specific recommendation by TISS, which is part of the scheme detail to look into the specific requirements of girls with disabilities.	There is no mandate for provision of accessible environment within the programme guideline. Though IEDDS links with this programme as far as girls are concerned. The provision for resources does not talk about, support services, accessible environment etc., The revised scheme design post recommendation by TISS has also failed to recognize girls with disabilities as one of its target groups. Information about the existence of the programme will be made available only in the Ministries website. This is a cause of concern given diversity of the population. This has a direct impact on the effectiveness of the programme.

			There is no mention of information in accessible means and modes and formats.
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Presented by Equal Centre for Social Justice, Chennai, 2018.

Table 6: Disability analysis of Information Communication Technology (ICT) provision under RMSA

Purpose	Mention of persons with disability as a focus group	Facilitators	Gaps
For provision of opportunities for secondary stage students to use ICT and to learn through ICT learning process, to build the digital divide among students across the socio economic and other geographical barriers.	×	Availability of a huge number of soft wares and innovations for persons with disabilities.	There is no clear indication that the website that facilitates access to e books and materials are accessible for persons with disabilities who use technology for information and communication.

Presented by Equal Centre for Social Justice, Chennai, 2018.

Table 7: Disability analysis of Vocationalisation of Higher Secondary Education under RMSA

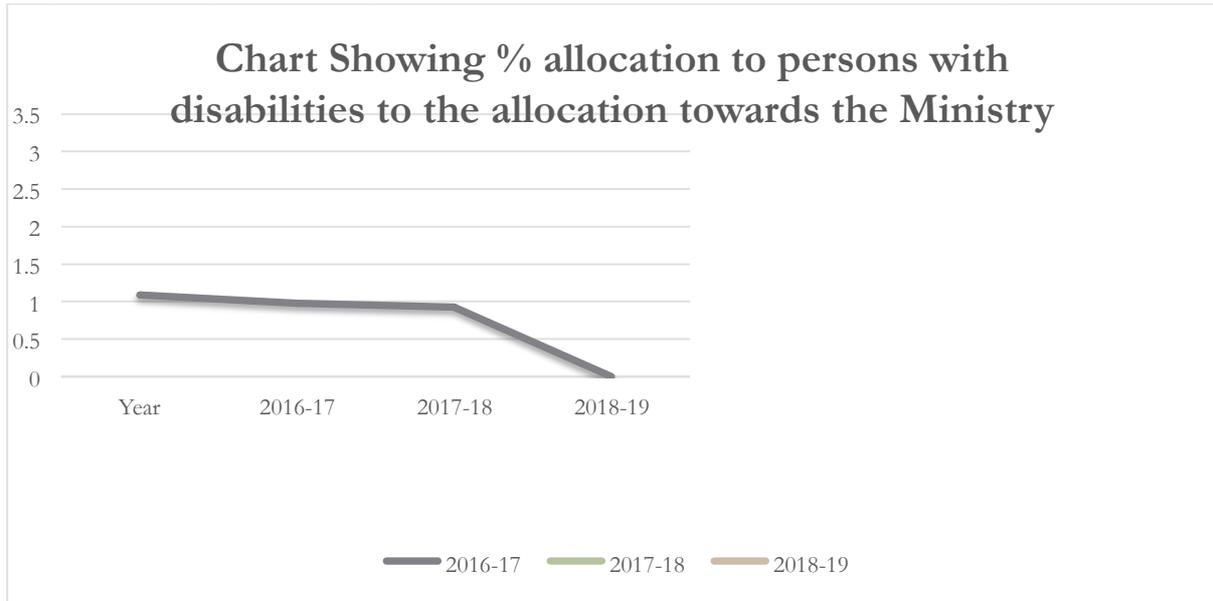
Purpose	Mention of persons with disability as a focus group	Facilitators	Gaps
Enhance the employability of youth through demand driven modular vocational courses.	Mentioned under coverage of special focus groups	Recognizes prior learning through NIOS, state open schools etc., – Grade V Link with IEDSS	Lack of Data Disaggregation Choice of the trainee / student is not accorded priority Since linked with IEDSS- there will be a contradiction to fulfill the demand driven nature of the programme as IEDSS is a supply driven programme. The cost sheet of the programme does not include reasonable accommodation costs, costs of provision of assistive devices, sign language interpreters. The checklist offered under the component for the States & UT's

			find no mention of the mandates that will lead to effectively include children with disabilities.
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Presented by Equal Centre for Social Justice, Chennai, 2018.

Article 25

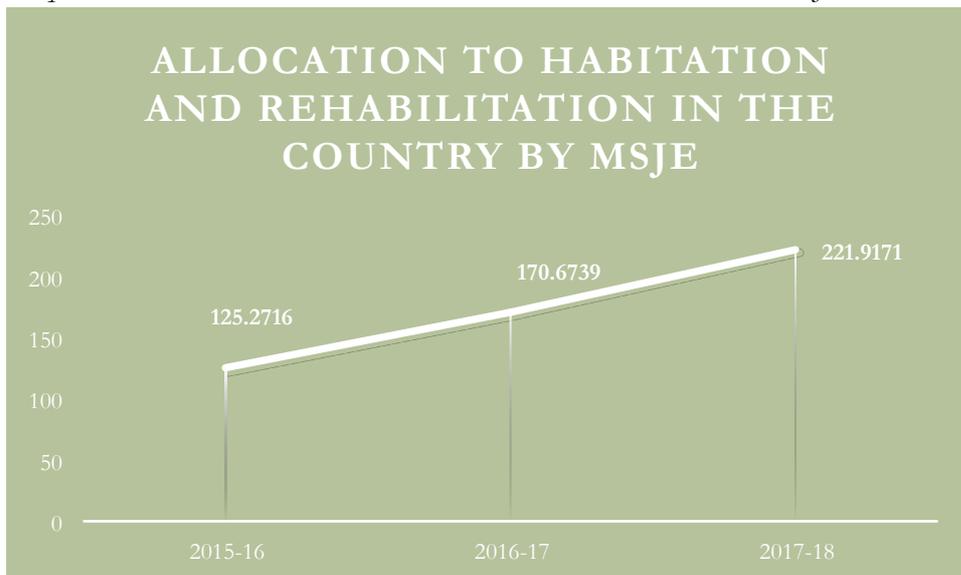
Graph 5: Percentage allocation to persons with disabilities to the allocation towards the ministry



Source: Ministry of Finance, 2018. Seen on <http://www.indiabudget.gov.in/ub2018-19/eb/sbe42.pdf>

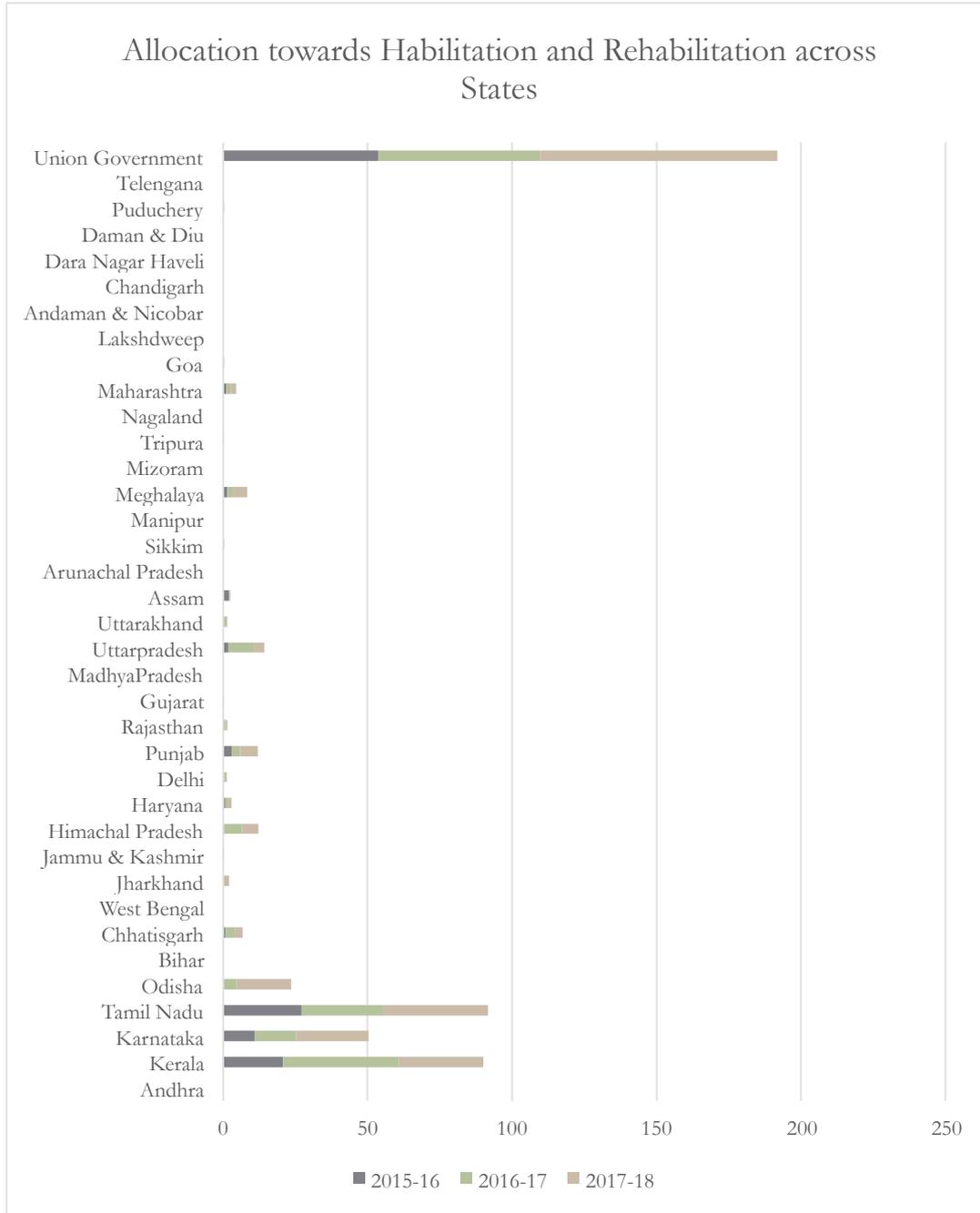
Article 26

Graph 6: Allocation to Habitation & Rehabilitation across India BY MSJE



Presented by Equals Centre for Promotion of Social Justice, Chennai, 2018

Graph 7: State-wise Allocation towards habilitation & rehabilitation



Presented by Equals Centre for Promotion of Social Justice, Chennai, 2018

Article 27

Case study 10: The impact of MGNREGA on persons with disabilities

In the State of Tamil Nadu the following is observed that less than 50% of persons with disabilities registered under the Act actually get to work despite the Act mandating work demands to be met within 15 days from the date of demand.

Year	No. of persons with disability registered for work	No. of persons with disability working	Percentage / Ratio
2014-15	127408	65383	51.31
2015-16	130420	65113	49.93
2016-17	130420	63803	48.92

Men with disability participate more in the programme compared to women with disability and persons who identify as transgender with disability. However, the percentage of non-worker population as per Census 2011 is skewed towards women with disability.

There is a lack of disaggregated data regarding the participation of persons with disabilities in the Programme.

(The observations taken from the Draft Socio-Economic Impact of Mahatma Gandhi National Rural Employment Act 2005, on persons with disabilities in Tamil Nadu, A study Report)

Presented by Equals Centre for Promotion of Social Justice, Chennai, 2018

Article 30

Case study 11: Poor functioning of the Paralympic Committee of India

The para-sports team of India went to Jakarta and were denied admission in the athletes village as the Ministry of Sports had not made the payment for their accommodation before they arrived. Further, the PCI denied that the para athletes faced several problems because of poor coordination between the PCI and Ministry of Sports.

Case study presented by AccessAbility, Delhi, 2018