



CENTRE FOR WOMEN'S DEVELOPMENT STUDIES
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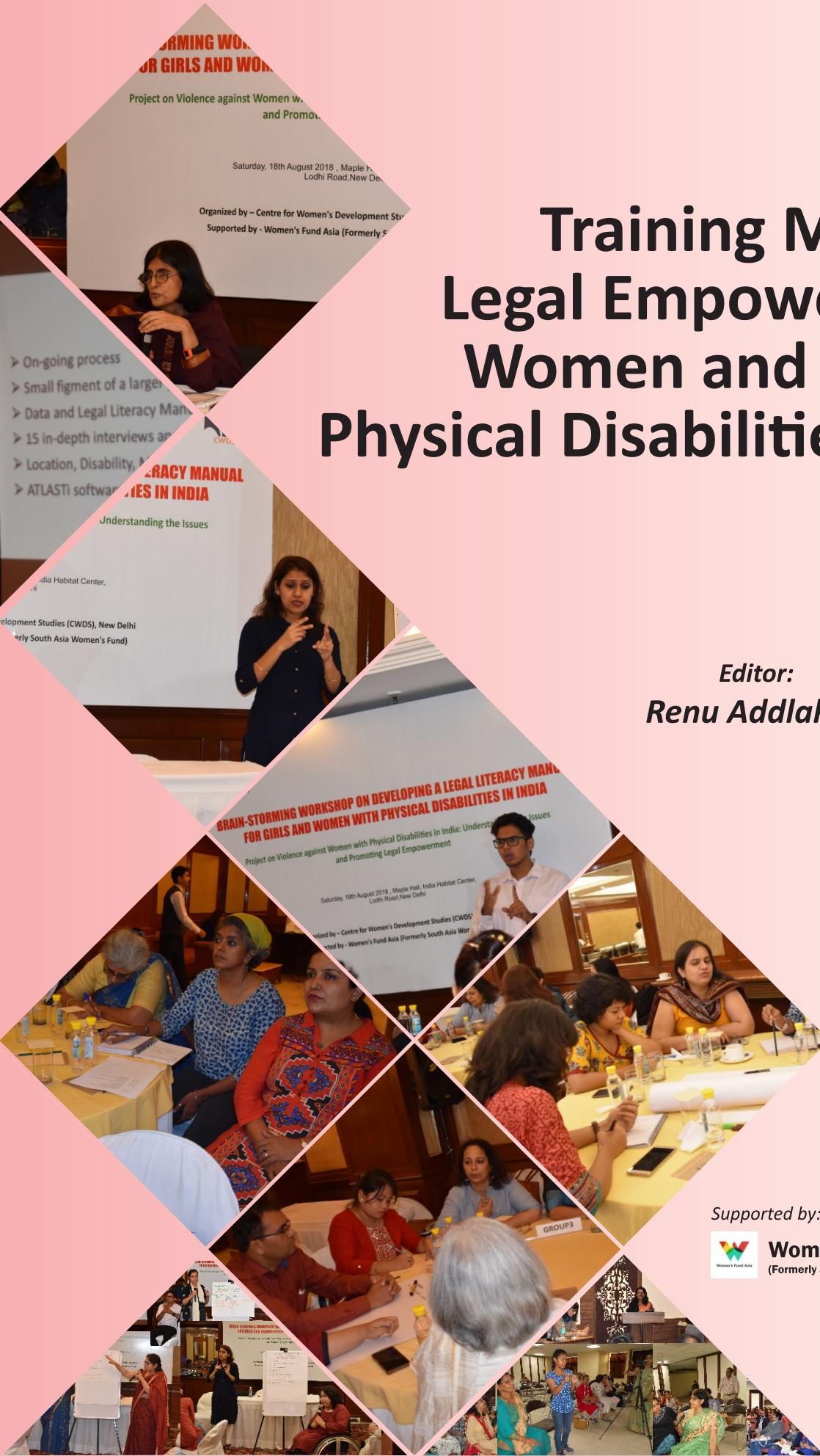
Training Manual for Legal Empowerment of Women and Girls with Physical Disabilities in India

Editor:
Renu Addlakha

Supported by:



Women's Fund Asia
(Formerly South Asia Women's Fund)



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Renu Adhlakha
Editor

Introduction

*Renu Addlakha*¹

This Legal Literacy Manual is an outcome of a Centre for Women's Development Studies (CWDS)² Project titled 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment'. This research-cum-advocacy initiative was supported by a two-year grant (2017-2019) from the Women's Fund Asia (WFA) formerly South Asia Women's Fund (SAWF). It is perhaps the first such context-specific training tool designed for girls and women with physical disabilities in India. Professor Renu Addlakha conceptualized the entire endeavor and was also the Project Director.

The main target group of this work was girls and women with physical and sensory disabilities (visual, hearing and loco-motor) in educational, employment, NGO and community settings in urban and rural areas in different parts of India. In addition for purposes of comparison and contrast in the sample population, interviews with leprosy-affected women (an old well recognized disability) and acid attack (a new legally recognized disability in India) survivors were also conducted. This is the most vulnerable group of women who lead very confined lives and are often victims of different forms of violence: physical, psychological, sexual, economic, etc. in domestic, institutional and community settings. It may be noted that other categories of disabilities like intellectual, psychosocial and developmental disabilities were consciously excluded from this project because girls and women in these groups experience very specific forms of oppression that at times overlap and at times differ from those suffered by girls and women with physical and sensory disabilities. Including all the categories of disabilities was not considered feasible in the light of the rationale and time-frame of the project.

Majority of girls and women with disabilities in India suffer the multiple discrimination of being female, being disabled and being poor. Neither reliable statistics nor systematic research exists to capture the level of neglect, isolation, stigma and violence that characterize their lives, even though the issue of violence against women in general has been one of the cornerstones of the Indian Women's Movement and has become center-stage in public policy after the 2012 Delhi gang rape. Due to mobility and communication barriers girls and women

¹ Professor, Centre for Women's Development Studies, New Delhi.

² Being the premier research institution in India for women and gender-related subjects, the organization's main commitment is to gender justice, and its core competence is in rigorous social scientific research on gender. These translate into a three-fold mission: to promote research-related issues across the social sciences; to initiate, monitor and revise gender-just state policies and social practices; and to conduct action research aimed at designing programmes for empowering women, particularly those facing multiple forms of deprivation and discrimination like women with disabilities. Its strengths include a 30-year-old history, strong links with women's and other grassroots organizations and a proven capability in using research as a tool for change. CWDS sees itself primarily as a catalyst in assisting women to realize their full potential and play an active role in social transformation.

with disabilities lack awareness about the laws and other redressal mechanism available to them. My own work with visually impaired women from different parts of India has made me realize the urgent need for both understanding the complex forms of violence which get routinized in their lives and the need to raise their consciousness about the remedies available to them for redressal. This project attempted to develop a comprehensive understanding of the nature, types and extent of violence experienced by this vulnerable group which could provide the wherewithal to develop effective strategies to address the problem. This Legal Literacy Manual is an outcome of that endeavor. This intervention tool aims to empower, raise consciousness about the rights discourse among women with disabilities WWDs in India to enable them to identify violations and use the justice system for redressal.

Apart from the Legal Literacy Manual, the project undertook to develop a systematic documentary database on violence against girls and women with disabilities in India culled from different domains like law, policy, media and the social sciences (particularly women and gender studies). But more importantly our conceptualization of the liniments of the Legal Literacy Manual emerged out of fieldwork that generated empirical data on the different experiences of violence of women with disabilities through focus group discussions (FGDs) and in-depth interviews in institutions and the community in different parts of Central Northwest and Eastern India. In total 76 FGDS and 62 in-depth Interviews were conducted. Ethical principles of respect, not doing harm and confidentiality were observed in the research. The interviews were audio-recorded and transcribed. FGDs and In-depth interviews were conducted by trained facilitators. Informed consent procedures were followed and the data has been anonymized during coding and analysis.

Apart from primary and secondary data collection and analysis, a number of brainstorming consultations/workshops at different points of the two-year project and a national-level conference on Disability Gender and Violence was organized on 26-27 February 2019³ at New Delhi. All these events/activities fed into the Legal Literacy Manual which is the main deliverable of the project.

Disability, Gender and Violence: Inter-Linkages and Intersections

Disability, gender and violence are integrally linked. Addressing gender-based and disability based violence necessarily involves a rights based perspective which is all the more fundamental when it comes to addressing the issues and concerns of multiple marginalized groups like girls and women with disabilities. Disability discourse is embedded in the human rights discourse. Infanticide of the disabled and the extermination of hundreds of disabled persons during the Holocaust are two extreme examples of historical dehumanization of disabled persons. Institutionalization, isolation, stigmatization and segregation of disabled persons is rampant even now throughout the world. When it comes to girls and women with disabilities, disability-linked and gender-based violence combine to create a deadly cocktail. Forced contraception, abortion and hysterectomies are most glaring examples of this, but there

³ Separate detailed report on these activities are available in the Centre for women's development Studies (CWDS), New Delhi.

are many other forms of violence which go undetected and unrecognized even by survivors themselves. It was the objective of this project to unveil these forms of violence through the testimonies of those experiencing them.

Many people become disabled through acts of violence, and people with disabilities are more frequently the objects of violence than people without disabilities. Being powerless, isolated and anonymous, girls and women with disabilities are even more vulnerable to abuse and violence. Indeed right at the outset, our needs assessment survey revealed that 88% of respondents felt women with disabilities are more vulnerable to violence; emotional violence emerged as the most cited experience of violence with public places being reported as the most prominent site for violence against Women with Disabilities.

Girls and women with disabilities are considered a financial burden and social liability by their families; they are denied opportunities to movement outside the home and access to education; they are viewed as asexual, helpless and dependent; their aspirations for marriage and parenthood are often denied; they grow up ensconced within the walls of their homes or special institutions, isolated and neglected with no hope of a normal life. This is the harsh reality even though the issue of violence against girls and women with disabilities has during the last decade been referred to in critical arenas like the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Convention on Elimination of all Forms of Discrimination against Women (CEDAW) and the more recent Rights of Persons with Disabilities Act passed by the Indian Parliament on December 2016. Violence against girls and women with disabilities is located at the interstices of two contemporary movements, but it finds limited space in both: the engagement from both sides so far has been rather sporadic and ad-hoc, more driven by the personal experiences of individual activists than something embedded within the ideological or organizational structure of the movements. For instance, feminist disability scholars and activists like Anita Ghai, Bhargavi Davar and Nandini Ghosh have attempted such a movement rapprochement. However, women's rights groups continue in the mainstream to collapse the concerns of women and girls with disabilities in the larger rubric of women's issues; while the disability rights movement is still more pre-occupied with education and employment issues wherein gender is secondary.

It is evident that the knowledge base around the issue of violence and disability particularly in India is still very weak; we don't have a clear and systematic understanding of the nature, types and extent of violence experienced by this marginalized constituency; we do not know how much of that violence stems from structural and contextual factors. This project sought to address this gap through primary research with the affected group. Since the problem is not even recognized as a social problem, there is a need to visibilize the issue by providing the necessary evidential knowledge base. But for knowledge to have an impact, it needs to find a tool of expression or intervention. Due to their marginal location girls and women with disabilities often become the silent victims of their oppression, since they lack the knowledge and understanding of redressal mechanisms. Having conducted workshops with girls and women with disabilities, I was convinced that legal awareness was the need of the hour. This project responded to this perceived need by producing this Legal Literacy Manual in consultation with disability, women rights activists and lawyers to enable girls and women with

disabilities to become aware of their legal rights and confidently access justice when they feel the need to do so.

Development of the Legal Literacy Manual: Process and Production

The first step in the development of this Legal Literacy Manual was a brainstorming workshop held in New Delhi on 18th August’2018. The rationale for this event was the felt need to elicit ideas and conduct discussions on the framework, themes, and topics to be covered in the proposed Legal Literacy Manual with an informed set of stakeholders. Participants included disability and gender rights activists, lawyers, NGO professionals, medical professionals and academicians. In addition to presenting a relevant slice of the findings of the fieldwork, the workshop format was more conversational involving free flowing panels, group and open house discussions. By the end of the day-long deliberations, a tentative outline of the Manual emerged. The following table shows this outline:

Table No. 1: Outline of Legal Literacy Manual for Empowerment of Girls and Women with Disabilities in India

S. NO	MODULE CATEGORY	MODULE NAME
1	General Conceptual	Disability
2	General Conceptual	Gender
3	General Conceptual	Violence
4	General Conceptual	Intersections of Disability, Gender and Violence
5	Operational but Non-Legal	Non-legal modes of Redressal
7	Legal Information-based	Gender specific Laws on Violence in India
8	Legal Information-based	Disability specific Laws on Violence in India
9	Practical	Navigating the Legal Justice System
10	Conceptual and Practical	Sexual Violence
11	Conceptual and Practical	Domestic Violence
12	Conceptual and Practical	Economic violence
13	Conceptual and Practical	Institutional Violence
14	Conceptual and Practical	Cyber-Based Violence
15	Practical	Important Resources for Legal Empowerment of Women with disabilities in India

The rationale for the above structure and sequencing of modules arose both from the discussions in the workshop as well as the data generated through in-depth Interviews and Focus group discussions with women with different disabilities from different spatial locations. For instance the specific identification of categories of violence like sexual, domestic institutional and economic violence arose from the field data. Given the nature of the socio-cultural reality in India wherein violence is regarded as a private affair surrounded by taboo and the legal system is not exactly user-friendly, law is not the first or preferred modality. That

is why we wanted to have a separate module on non-legal modes of addressing violence. Then, we felt that in the era of social media communication, the absence of a discussion on cyber-violence would be inexcusable even though this category did not emerge significantly in our fieldwork.

While disability-specific laws are gender-neutral and gender-specific laws do not have specific provisions for women with disabilities, the situation is slowly changing with a separate article on women with disabilities in the Rights of Persons with disabilities 2016 and specific provisions for recording of evidence and enhanced punishments when it comes to cases involving women with disabilities in the Criminal Law Amendment Act 2013.

After the Legal Literacy Manual structure was finalized, some amount of time and effort were invested to constitute a group of module writers having the necessary ideological commitment, professional competence and willingness to write the different modules. Legal, disability, gender and legal rights teachers, researchers and practitioners with significant amount of experience in their respective fields were chosen. Subsequently the final table of contents of the Manual emerged.

Table No. 2: Legal Literacy Manual for Empowerment of Girls and Women with Disabilities in India: Module Title and Author

S. NO	MODULE CATEGORY	MODULE NAME	MODULE AUTHOR	AFILIATION
1	General Conceptual	Disability	Shubangi Vaidya	Associate Professor, School of Interdisciplinary and Transdisciplinary Studies, Indira Gandhi National Open University (IGNOU), New Delhi
2	General Conceptual	Gender	Ashika Bhargav	PhD Scholar, MPhil/Ph.D. Collaborative Programme in Women's and Gender Studies, Ambedkar University Delhi (AUD)/ Center for Women's Development Studies(CWDS), New Delhi
3	General Conceptual	Violence	Nandini Ghosh	Assistant Professor, Institute of Development Studies, Kolkata
4	General Conceptual	Intersections Of Disability, Gender And Violence	Sankalpa Satapathy	Assistant Professor, Social Sciences, Institute of Public Health, Kalyani, West Bengal

5	Operational But Non-Legal	Non-Legal Modes Of Redressal	Sabah Siddiqui	Independent Scholar and Researcher, India.
7	Legal Information-Based	Gender Specific Laws On Violence In India	Shalu Nigam	Practicing Lawyer, Researcher and Activist (gender, governance, law and human rights), Gurugram
8	Legal Information-Based	Disability Specific Laws On Violence In India	Sunakshi Bajpai	Research Associate, Center for Women's Development Studies Project on: Violence against Women and Girls with Physical Disabilities: Understanding the Issues and Promoting Legal Empowerment supported by Women's Asia Fund, New Delhi
9	Practical	Navigating The Legal System	Vidhushi Kothari and Maitreya Shah	Vidushi Kothari: PhD Scholar, Jindal Global Law School, Sonapat, Haryana. Maitreya Shah: Law Student, Gujarat National Law University, Gandhinagar, Gujarat and Independent Disability Rights Activist
10	Conceptual And Practical	Sexual Violence	Amitrananda Chakraborty	Independent Advocate, Delhi.
11	Conceptual And Practical	Domestic Violence	Shalu Nigam	Practicing Lawyer, Researcher and Activist (gender, governance, law and human rights), Gurugram,
12	Conceptual And Practical	Economic Violence	Dipika Jain and Kavya Kartik	Dipika Jain: Associate Professor, Associate Dean, and Executive Director, Centre for Health Law, Ethics and Technology at Jindal Global Law School, Sonapat, Haryana.

				Kavya Kartik: Research Associate, Centre for Health Law, Ethics and Technology, Jindal Global Law School, Sonapat, Haryana.
13	Conceptual And Practical	Institutional Violence	Neha S Chaudhry	Independent Researcher, New Delhi.
14	Conceptual And Practical	Cyber-Based Violence	Sunakshi Bajpai and Renu Addlakha	Research Associate , Center for Women’s Development Studies Project on: Violence against Women and Girls with Physical Disabilities: Understanding the Issues and Promoting Legal Empowerment supported by Women’s Fund Asia, New Delhi Renu Addlakha Professor, Centre for Women’s Development Studies, New Delhi
15	Practical	Important Resources For Legal Empowerment Of Women With Disabilities In India	Sunakshi Bajpai and Seema Baquer	Seema Baquer: Independent Consultant, New Delhi. Sunakshi Bajpai: Research Associate, Center for Women’s Development Studies Project on: Violence against Women and Girls with Physical Disabilities: Understanding the Issues and Promoting Legal Empowerment supported by South Asia Women’s Fund

Target Audience

Combining the results of the field research with the inputs from multiple expert consultations during the project period, the Manual has been primarily developed for use as a training and self-learning tool by disability, women's and legal rights organization for legal literacy of girls and women with disabilities in their on-going work. Of course, a conscious attempt has been made to make it accessible to women with disabilities with a basic level of education. The structure and contents of the Manual bear this out. Each module begins with clearly delineating its specific objectives. This is followed by a general introduction to the topic of the module. Subsequently the different sub-themes falling within the general topic of the module are discussed in sub-sections. Citations from academic articles and legal documents are referenced. Attempts have been made to incorporate field data from the project into each module for purposes of illustration. Some authors have used hypotheticals from their own work for the same purpose. Each module has a set of questions and exercises to help users test their comprehension of its contents. Even though legal provisions and their practical application are discussed in detail, a concerted effort has been made to make it easy to understand and be accessible to a diverse audience with differential levels of education. The last module in the Manual is a list of important resources containing information on helplines, guidelines for filing police reports, initiating litigation etc. with a particular emphasis on specific provisions for persons/women with disabilities.

Perhaps the most important result of this project would be making girls and women with disabilities aware of their legal rights as citizens of a democracy; having a working understanding of accessing the legal and criminal justice systems and having the courage to actually stand up to violence with confidence and knowledge that they can get justice notwithstanding the marginalization to which they are subjected by virtue of being both female and disabled. This Legal Literacy Manual is a critical advocacy tool that can be used by NGOs, schools, colleges to facilitate empowerment of girls and women with disabilities across the country. It is also hoped that increased awareness and confidence among girls and women with disabilities about the legal remedies available to them would over time translate into greater use of justice delivery mechanisms. Once a tool of this nature is designed, it is possible to reconfigure it into multiple digital formats including braille audio-visual which could be accessed by girls and women with different sensory disabilities.

Outcome and Impact

Violence is a very complex and sensitive issue and even in the presence of ethical safeguards, there is a certain unpredictability to the way events and situations unfold when it is the center-piece of investigation. While we may have broad theories of change to envision impacts and outcomes, it is difficult to precisely predict (leave aside assess) how individuals exposed to an intervention or even simple engagement with the issue carry it forward. We are anticipating that partner organizations mainstream using this Manual in their routine work and even tweak it to suit their particular context. The Manual is a template that covers a range of issues around gender and disability specific-violence pertinent to the lives of girls and women

with disabilities in India in general. It rests on the judgement of trainers and facilitators on how to transact its contents and then to systematically evaluate the impact of that transaction. Some simple indicators could be that the girls and women who participate in the training are able to recognize the multiple forms and layers of violence in their lives and develop the courage and confidence to take action. Checking the level of comprehension of the legal mechanism of access to justice after undergoing the training is another assessment parameter to evaluate both the utility and effectiveness of the Manual. Yet another method of evaluation could be a systematic exploration and documentation of the experiences of the disability and gender rights organizations who use the Manual over time in their catchment areas.

I sincerely hope that this Manual becomes the basis for a broader engagement with disability gender and law by civil society organizations in India.

1. Disability

Shubhangi Vaidya⁴

Objectives

This module will help the reader to understand:

- Disability as an evolving concept
- Medical and social dimensions of disability
- Disability as an axis of discrimination and its relationship with other categories of marginalisation
- The various types of disabilities notified by the Rights of Persons with Disabilities (RPWD) Act, 2016 in India
- An overview of the experiences of disability particularly Women with Disabilities, in India.

1.1 Introduction

Disability is a universal feature of the human condition. It has existed across cultures and societies through the ages. According to the World Bank⁵, about one billion people in the world, i.e. about 15% of the population, experience some form of disability. Therefore, there is an urgent need to talk about it, deal sensitively with it and devise strategies and opportunities to minimize the disadvantages and discrimination that disabled people experience in all walks of life.

In this module, we will examine the concept of disability in some detail. We shall first try and understand how perceptions about disability have evolved; from viewing it merely as a medical defect or personal misfortune, activists, scholars and policy-makers now view it as a social issue, constructed by attitudinal and environmental barriers and discrimination. The world-wide Disability Rights Movement and the academic field of Disability Studies, have played an important role in developing a nuanced understanding of disability from the perspective of disabled persons themselves, and have projected it as an issue of human rights, entitlements and citizenship. International organizations like the United Nations and national governments also initiated legislative and policy actions to address the issues of persons with disabilities. Some significant landmarks were the declaration of the International Year of Disabled Persons in 1981 and the United Nations Decade of Disabled Persons in the period 1983-1992. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities was adopted by the General Assembly on 20 December 1993. Country specific legislation like the Americans with Disabilities Act (1990), the Disability Discrimination Act in Australia in 1992 and in the UK in 1995, brought issues of disability to the forefront.

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⁵Available at <https://www.worldbank.org/en/topic/disability#1>

In India, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act came into existence in 1995. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), adopted in 2006, to which India was one of the earliest signatories, is a landmark in the disability movement, and places the issues around disability squarely within the domain of human rights. The various disabilities notified by law and the emerging issues and concerns around disability in India will be discussed in this module.

Let us begin with a general overview of the universal nature and presence of disability as an aspect of **human experience**.

1.2 The Universality of Disability

As mentioned above, disability is a universal feature of human life. Everybody reading this module would have come across one or more persons with disability in their extended family, social or professional circles or neighborhoods.

A disabling condition can be present since birth or may occur any time during the course of a person's life. For instance, congenital disabilities such as Down's Syndrome,⁶ Thalassaemia,⁷ Hemophilia, Fragile X syndrome⁸, Spina Bifida⁹ etc. are the result of some genetic or chromosomal variations that take place before the child is born. Disabilities may also result from birth injuries, for instance, deprivation of oxygen at the time of birth may result in brain damage, which affects physical and intellectual development resulting in conditions like Cerebral Palsy.¹⁰

Some disabilities like autism¹¹ may not be immediately obvious, but get identified and diagnosed as the child grows, becoming apparent when certain developmental milestones are not achieved. Some diseases and illnesses may lead to disabling conditions, for example, Poliomyelitis¹² can result in limb deformities.

Accidents, natural and man-made calamities, environmental disasters, conflict and warfare can also result in physical injuries or mental trauma that may render people disabled either temporarily or for life. You may have read or heard news reports about amputations resulting from hidden land-mines in conflict zones in different parts of the world. Exposure to environmental and man-made hazards can cause disabling conditions that acutely impact the quality of life. For instance, in the worst ever industrial accident caused by toxic gas leak at the

⁶Down's syndrome is a genetic disorder caused when abnormal cell division results in extra genetic material from chromosome 21. It causes a distinct facial appearance, intellectual disability and developmental delays.

⁷Thalassaemia is a blood disorder in which the body makes an abnormal form or inadequate amount of haemoglobin, resulting in large numbers of red blood cells being destroyed, which leads to anaemia.

⁸Fragile X Syndrome is a genetic condition that causes a range of developmental problems including learning disabilities and cognitive impairment.

⁹Spina Bifida is a birth defect that occurs when the spine and spinal cord don't form properly and can result in paralysis of the lower limbs.

¹⁰Cerebral Palsy refers to a set of neurological conditions that affect muscle movement and coordination.

¹¹Autism is a developmental disorder that is characterized by difficulty in social interaction and communication and by restricted or repetitive patterns of thought and behaviour.

¹²Poliomyelitis (Polio) is an infectious viral disease that affects the central nervous system and can cause temporary or permanent paralysis.

Union Carbide Corporation's pesticide plant in Bhopal in 1984, thousands of people lost their lives or were permanently disabled. Many of the victims were unborn babies, who developed fetal abnormalities in the womb.

Thus we see that disabilities can occur anytime, anywhere and to anybody. A person may think of oneself as 'able-bodied/non-disabled/normal', yet may suddenly become the victim of an accident, or experience an ailment that may leave him/her disabled.

Disability is strongly associated with poverty and underdevelopment. Poor maternal health, inadequate primary health care and low nutritional status, lack of clean drinking water and sanitation can result in disabling conditions. For instance, Vitamin A deficiency is the leading cause of preventable childhood blindness and increases the risk of death from common childhood illnesses such as diarrhea. Maternal malnutrition can result in impaired development and disabilities in the unborn baby: iodine deficiency in the mother is one of the most common causes of cognitive disability. Since poverty and disability are deeply interconnected, efforts to ameliorate poverty would result in reduction in disabling health conditions.

Even in rich, developed countries with well-developed healthcare, old-age related conditions like Alzheimer's¹³ and Dementia¹⁴ are becoming more common as life expectancy is increasing. Since as we age, we also become more prone to becoming disabled. It is famously said, we are all 'temporarily able-bodied'.

Even though disability is present everywhere, it is surrounded by superstition and negativity. The very word invokes a sense of fear, shame, hostility, rejection, pity or a complex mixture of these. Persons with disabilities are considered as a blight or a curse upon the family, unlucky, pitiable and to be hidden away from public view. The theory of 'karma' is often referred to as the 'cause' for disability and any other 'misfortune'; a disabled person is thus believed to be paying the price for bad deeds or 'karma' in a previous life. If a child with a disability is born, the parents may be blamed; usually it is the mother who bears the brunt of the blaming and shaming. Her conduct and life-style during her pregnancy may be held responsible for the birth of the disabled child; she may be accused of having 'bad blood' or some genetic flaw which was not disclosed at the time of marriage. If the disabled child is a girl, then it is considered a fate worse than death, as female children are considered inferior and unwanted in many parts of the world, including India. Before we discuss these issues further, it would be appropriate to first understand how disability is understood in the contemporary discourse.

Questions/Discussion

If Disability is such a Universal Reality, why has it not been given the kind of attention it deserves?

¹³Alzheimer's is a progressive brain disorder that can occur in middle or old age, resulting in loss of memory, thinking skills and ability to carry out even simple tasks.

¹⁴Dementia is a general term for a decline in mental ability severe enough to interfere with daily life, e.g. memory loss. Alzheimer's is the most common type of dementia.

1.3 Understanding Disability: Medical and Social Dimensions

Defining disability is not easy. According to Harris and Enfield (2003), it is important to keep in mind the preferences of disabled people themselves, and also be aware of the fact that ‘acceptable terminology’ changes over time, as well as from one culture to another. For instance, the term ‘handicapped’ that was earlier used to describe persons with disability is today considered a negative one; it suggests the image of a person with ‘cap in hand’, begging for alms, and was rejected by disability rights activists themselves. Terms like ‘differently abled’ or ‘special’ are used widely, but are also criticized by many activists because they do not capture the discriminations faced by persons with disabilities, and gloss over the experience of disability by using flowery language. In India, the Hindi term ‘apaahij’ is also not considered appropriate, and ‘viklang’ was the term officially used. Recently, ‘viklang’ has been replaced by ‘divyang’, a term that has led to controversy and is considered by some disabled people as being rather patronizing.

The ‘medical’ and ‘social’ models have long been regarded as major ways of conceptualizing disability. While the medical model regards disability as a medical condition or problem to be set right and cured, the social model regards disability as a social condition, produced by negative social attitudes, inaccessible physical and social environments, and exclusion and rejection of persons with disability from ‘normal’ activities and institutions of society. Let us discuss this in more detail.

As per the medical model, disability is an abnormality or pathology residing in the affected individual. The individual or the family may be blamed for ‘causing’ the disability (e.g. genetic defects, bad parenting or an individual’s bad habits). Disabled individuals are dubbed ‘patients’ and described clinically e.g. ‘the patient suffers from autism/cerebral palsy/Down’s syndrome’; they are expected to avail of medical therapies or treatments that will help to cure or fix their condition, or avail of rehabilitation so that they can adjust to their condition. Medical professionals, psychologists, special educators and other experts carry out interventions/therapies and work *on* rather than *with* them, thereby creating a power relationship between the disabled individual and the medical profession (Goodley, 2011:7).

The ‘social model’, unlike the medical model, was evolved and developed by disabled people themselves. As per this model, which first gained prominence in the United Kingdom in the 1970s, disability is *socially constructed*; persons with disability are discriminated against by so-called ‘normal’ society; denied access to education, employment, leisure and recreation, and thus forced to lead lives of isolation, dependence and rejection. The ‘solution’ or ‘cure’ is not medical or rehabilitation, but rather, social and political inclusion and participation in the affairs of society; accessibility of places and services, and promoting a positive self-image and identity. The slogan ‘Nothing about us without us’ and the demand for rights of persons with disability emerged from this understanding (Goodley, 2011: 13). The Disability Rights Movement in the UK, USA, and across the world, and the emergence of ‘Disability Studies’ as an academic field were the outcome of this new way of thinking about disability. Mike Oliver (1990, 1996); Vic Finkelstein (1980); Colin Barnes and Geoff Mercer (1996) were among the major proponents of the social model of disability. Scholars, often themselves

disabled, from the fields of sociology, political science and other disciplines attempted to understand and theorize the disability experience, and Disability Studies emerged as an interdisciplinary research enquiry on the lines of Women's Studies, Race Studies and Queer Studies.

In this context, two key terms – 'impairment' and 'disability' – came to be used to distinguish between the medical and social dimensions. Impairment has been defined as 'lacking all or part of a limb; having a defective limb, organ or mechanism of the body'. In contrast, the term disability, as per the social model outlined above, emphasizes how society denies a person, who has an impairment, his or her human rights. 'Disability is the disadvantage or restriction of activity caused by contemporary social organization, which takes little or no account of people who have impairments, and thus excludes them from the mainstream of social activities' (the Union of the Physically Impaired Against Segregation, 1976: 14). Let us look at some examples to illustrate this point.

Hypotheticals

Vikram is a young man who lost his sight during childhood as a result of an illness. Due to his 'impairment', namely, loss of vision, Vikram was unable to complete his education, and as a result, is unemployed. He is considered a burden on his family, as he is an 'unproductive dependent'. His mobility is highly restricted and he needs a family member to accompany him whenever he goes out. His chances of marriage and family life are considerably reduced. His impairment has 'disabled' him, as social arrangements and systems were unable to accommodate his needs and requirements.

Ashwini is a girl with intellectual disability. Her parents are loving and caring, but the extended family has always blamed them for Ashwini's impairment. As a girl with disability, she is considered to be doubly vulnerable. Worries about her growing up, particularly her sexuality and sexual safety, gives her family members sleepless nights. She has had some education and training but her family is reluctant to send her outside the house for fear that she may be taken advantage of. She has no friends of her age, and peers make fun of her and consider her a lesser being. She spends the whole day cooped up at home and hardly has any life outside the four walls of the house. In her case too, impairment has become a serious, life-long disability.

Now let us imagine these scenarios somewhat differently. After losing his vision, Vikram was provided with training in Braille and his educational materials were provided in accessible formats. He completed his education and was able to secure a job. Reasonable accommodations were made at his workplace to enable him to work smoothly. He met the young lady who was to become his wife at an office get-together, and they both have a good social life and circle of family and friends. He is regarded as a valuable, contributing member of society and has freedom to make his own decisions and lead life on his own terms. Even though he does need support with some activities, he is not regarded as 'burden' or his life a tragedy.

Ashwini, who was not very much inclined to study, liked working in the kitchen and in particular enjoyed baking. Her family arranged for her to receive vocational training in baking and confectionary, and encouraged her to pursue her hobby as a profession. They take pride in her accomplishment, and the fact that she receives many orders for cakes from the community. She delivers her orders herself, receives payments, keeps accounts and has a bank balance. She is recognized and liked in her community, and her self-confidence has increased as a result. Her family is open to the fact that she may one day want to marry and are ready to help and support her to make a good choice. Like Vikram, she also needs help in some aspects of her life. But she is now considered as a contributing individual who has a place in society.

The disabling effects of social attitudes and barriers were starkly visible in the above examples; at the same time, you will have appreciated that persons with disabilities can lead valuable and dignified lives with inclusive practices and attitudes, as we saw in the second set of scenarios. The reality, unfortunately, is that all over the world, persons with disabilities experience discrimination and marginalization of some sort or the other. These discriminations and disadvantages also depend upon other social factors like class, caste and gender. It is fair to say that disability should not be viewed solely as a medical or social condition; rather, as “a dynamic interaction between health conditions and contextual factors, both personal and environmental” (World Report on Disability, 2011:4).

The *International Classification of Functioning, Disability and Health (ICF)* prepared by the World Health Organization presents a “bio-psycho-social model” of disability that integrates both the medical and social models. “Disability is the umbrella term for impairments, activity limitations and participation restrictions, referring to the negative aspects of the interaction between an individual (with a health condition) and that individual’s contextual factors (environmental and personal factors)” (World Report on Disability, 2011: 4). In the ICF, impairments are defined as problems in body function or alterations in body structure – for example, paralysis or blindness; activity limitations refer to difficulties in executing activities – for example, walking or eating; participation restrictions arise from difficulties in being involved in any area of life – for example, discrimination in employment or transportation (ibid: 5). The major international rights-based covenant, the United Nations Convention on the Rights of Persons with Disabilities (UNCRDP) adopted in 2006, states in its Preamble that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”. Thus we can clearly see that by defining it as an ‘interaction’, disability is no longer seen as just the individual’s problem or attribute; rather, society is acknowledged as playing an important role in addressing the barriers and gaps that people face in their daily lives, and which hamper their inclusion and participation in social life, as we saw in the stories of Vikram and Ashwini above. Let us take a closer look at some of these disabling barriers that are experienced by persons with impairments.

Questions/Discussion

Using the social and medical model approach, discuss its relevance with regard to blindness.

1.4 Disability and Discrimination

Harris and Enfield (2003) identify three types of barriers and discrimination experienced by persons with disability: attitudinal, institutional and environmental. As we have discussed earlier, negative attitudes such as fear and ignorance may lead to exclusion and avoidance of persons with disability; it is usually believed that they are incapable of achieving much or capable of leading a good quality, fulfilling life. Disability is also surrounded by negative imagery, language and stereotypes. The sociologist Nilika Mehrotra (2013) in her study of disability and gender in rural Haryana found that a number of terms are typically used to address persons with disabilities instead of their names, e.g. ‘Surdas’ (for a blind person), ‘langda’ (lame) or ‘bawli’ (simple-minded). Some typical proverbs and sayings also portray disabled people as erratic, impotent and unlucky. In everyday talk, words like ‘andha’ (blind), ‘behra’ (deaf), ‘goonga’ (mute) are used to denote character flaws, not just physical ‘defects’. We are all aware of stories from our myths and folklore which portray persons with disabilities as morally flawed; for example, the blind King Dhritarashtra in the Mahabharata who was incapable of ‘seeing’ the evil deeds of his sons, the Kauravas, and the injustice done to his nephews, the Pandavas; the villainous lame Shakuni, in the same epic, and the scheming hunch-backed Manthara in the Ramayana, who incited Queen Kaikeyi to have Ram exiled from Ayodhya.

Stereotypical understandings of disability are widespread; for instance, persons with autism are believed to be violent and aggressive; persons with intellectual impairments are considered incapable of learning, and therefore not encouraged to go to school; and persons with mental health issues may be regarded as incapable of taking correct decisions, violent and dangerous and thus requiring institutionalization. These negative images and stereotypes translate into negative behavior on the part of non-disabled people, including teasing and bullying at school, making fun of or ridiculing disability, and all too frequently, abuse and violence. This can result in persons with disabilities having poor self-esteem and low confidence in their abilities, causing them to withdraw from society and making them feel even more vulnerable and alone. In the case of children with intellectual and developmental disabilities, in particular, we see that attitudes of lay persons and professionals alike are usually negative and unwelcoming. A school may not want to entertain a child with intellectual or learning disabilities as this would ‘bring down the level’ of the institution; children may tease or bully the child and use cruel terms like ‘duffer’ or ‘idiot’; teachers may be impatient and irritable at the ‘extra effort’ they may have to take, and may resort to punishing or humiliating the child; other parents may feel that the presence of the disabled child would have a ‘bad effect’ on their own wards and pressurize the school authorities not to admit children with disabilities. These attitudes may make the child feel miserable and rejected, and parents may just withdraw the child from school and keep him/her at home, ‘safe’ from jibes and taunts.

Public education and awareness campaigns can do much to bring about attitudinal change and promote inclusivity, and the role of Disabled People’s Organizations and disability related NGOs in this regard has been noteworthy. However, these efforts are usually concentrated in urban areas, and restricted in their impact and outreach.

Environmental discrimination occurs when public services, buildings, and transport are inaccessible for disabled persons, and thus exclude the person from participation in the affairs of society. The environment has a very important impact on the way persons experience their disability. If public buildings like offices, libraries, hospitals and educational institutions as well as transportation systems are difficult to navigate, then persons with disabilities are automatically excluded or face extreme difficulties in accessing even essential services. Environmental factors include availability of proper signage, Braille or screen reading software for blind persons, sign language interpreters for deaf persons, and ramps and platforms for wheelchair users and persons with difficulty in walking. Accessible toilets are particularly hard to find; in India, the commonly used toilet is the floor level pan, which may be impossible for persons with orthopedic disabilities or mobility issues to use. Narratives of persons with disabilities, especially women, reveal that their movement in public spaces is particularly difficult because they are forced to control their bowel and bladder movements due to lack of toilets. This single factor is very often responsible for preventing them from going out and remaining confined to their own homes. Persons with conditions like autism who may have sensory difficulties, often find it very stressful to function in environments where there is loud noise, crowds, or very bright lighting; the sight of an autistic child having a ‘meltdown’ in a public place leads to much discomfort and stigma for the accompanying adults too, further reinforcing the stereotypes of bad parents and uncontrollable children.

As mentioned at the start of the module, environmental factors such as safe drinking water and sanitation, nutrition, healthcare, working conditions, climate, etc. also impact health and may result in disability. Prevalence of certain developmental disabilities like autism is increasing; there is speculation on the role of environmental pollution, although it is not proven that it does play a role.

Institutional discrimination occurs when laws, policies, rules underlying service provision etc. discriminate against persons with disabilities. For example, denial of the right to vote, stand for public office, marry and have children, own property etc., reduces them to the level of second class citizens without rights.

The history of developed western nations shows that until very recently, persons with disabilities were separated from their families and put away in institutions and asylums where they lived poor quality lives with little or no access to the rights and privileges of ‘normal’ people. Sterilization of intellectually disabled persons, denying them the right to have intimate relationships and marriage was also widespread and had legal sanction. In the case of persons with mental illness or psycho-social disabilities, forcible psychiatric treatment, electroconvulsive therapy (popularly known as shock treatment) and confinement in asylums were also carried out, ostensibly in their own interest. A strong ‘anti-psychiatry’ movement by ‘survivors’ has emerged to challenge and reverse such practices.

Questions/Discussion

What are some of the main barriers for a woman with Loco-motor Disability in India?

1.5 Disability and Intersectionality

Disability, in interaction with other categories of marginalization such as socio-economic class and gender, produces different effects for different people. In this section, we shall look at how disability is an ‘intersectional’ category. In simple terms, the extent to which the disability and related discriminations are experienced depends upon the various social categories to which the individual belongs. A person with disability who is poor, and belongs to a disadvantaged class or caste group or community, is likely to experience a greater degree of disadvantage and marginalization.

We have repeatedly mentioned the link between disability and poverty; this link is bidirectional. Disability may increase the risk of poverty, and poverty may increase the risk of disability; and there is ample evidence to show that people with disabilities and their families are more likely to experience economic and social disadvantage as compared to other families. According to the World Report on Disability (2011:10), “the onset of disability may lead to the worsening of social and economic well-being and poverty through a multitude of channels including the adverse impact on education, employment, earnings, and increased expenditures related to disability”. Children with disability are less likely to go to school; this will further impact their job prospects when they grow up. Disabled persons face unemployment, and when employed, they experience wage discrimination. Lack of access to healthcare, transportation, financial assistance, governmental schemes etc. further pushes them into the jaws of poverty. Families with a disabled member face greater financial insecurity and the impact is experienced by the whole family. Medical and rehabilitative measures may place a further drain on their already stretched resources. The vicious cycle of poverty and disability can completely ruin a poor family struggling to make both ends meet.

Caste and class in the Indian context also bear a strong correlation. Persons from the lower castes, the Dalits, have historically been placed at the bottom of the social hierarchy and discriminated against in all walks of life and suffered unspeakable atrocities and exclusion at the hands of the upper castes. Due to their weak social and economic status and denial of access to education, decent work, housing and healthcare, it is not difficult to imagine the impact of a disability, in addition to all these. Affirmative Action and state mandated welfare measures since Independence have succeeded only to a limited extent in pulling these marginalized communities out of the vicious cycle of poverty and marginalization; much is yet to be done. The continuance of practices like manual scavenging, hazardous and unprotected work like cleaning of drains and septic tanks etc. which were traditionally relegated to them, also pose grave health risks and possible disablement.

The experience of disability also differs in rural and urban areas; in India, as per the Census of 2011, the majority of the disabled population, i.e. 69% of a total of 26.8 million, reside in rural areas. In rural India, where agriculture and related occupations involving manual labor are the basis of livelihood, physical and sensory impairments which affect a person’s ability to work on the fields, are considered serious disabilities while other conditions like mild intellectual disability which may not hinder their participation may not be regarded as a disability at all. The difficulty in accessing education, welfare schemes, assistive devices and

the general precarity of rural life, makes the condition of persons with disability particularly worrying.

Gender too plays a critical role in the experience of disability. A good deal of scholarship, both globally and within India, attempts to understand and analyze the relationship between disabilities and gender (Mehrotra, 2013; Addlakha, 2013; Hans, 2015). As both categories are based upon bodily differences and the discrimination that results from it, feminists and disability studies scholars and activists have found many points of commonality and shared experiences. Most fundamentally, to be a woman with a disability is to be ‘doubly marginalized’ or suffering from a ‘double jeopardy’. This is because both identities are devalued in relation to being male and able-bodied. Disabled girls and women have even less access to education, health care, and employment than disabled boys and men. Women with disabilities experience ‘body-shaming’ on account of their physical appearance and impairments and are often denied the roles of wife and mother. If they are married, they may be subjected to violence or abandonment, especially if they acquire the disability after marriage. With regard to sexuality, they are considered ‘asexual’ (not having any sexual desire or value) as well as ‘hypersexual’ (or over sexed); they are also extremely vulnerable to sexual abuse which they may not be able to resist or report on account of their impairments. Health care for women with disabilities, especially reproductive health care, is inadequate.

Thus we see that disability, in interaction with other social categories, plays out in different ways, affecting the entire life-span of a disabled person. Disability is thus a heterogeneous category and cannot be spoken of or discussed as a single blanket term, any more than the category ‘woman’ or ‘man’ can homogeneously represent all women and men. This heterogeneity can also be seen in the wide range and variety of conditions that are considered as disabilities. The experiences and life-chances of persons with physical or sensory impairments are quite different from those of people with developmental or intellectual disabilities. A person born blind may experience the world very differently from someone who loses his or her sight as an adult.

Questions/Discussion

How are the experiences of a man and a woman with Hearing Impairment different?

1.6 Types of Disabilities

In this section, we will try and understand the various disabilities with special reference to the legal framework in India.

Disabilities may be temporary or permanent; congenital or acquired; physical, sensory, intellectual, developmental or psycho-social and communication related. They may be static (e.g., an amputated limb) or progressive (certain neurological conditions like Parkinson’s disease). What constitutes a disability varies across time and social contexts. For instance, conditions like autism and learning disabilities came to be understood and identified only a few decades ago. Disability is also an ‘administrative’ category, and whether a condition is

recognized as one, and qualifies for assistance, depends upon recognition and certification by the state.

What are the various conditions that are considered as disabilities in India? The first rights based legislation dealing with disability, namely, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, identified a select number of disabilities, namely, blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation and mental illness, and specified that an individual must be medically certified as having at least 40% severity of the specified disability to avail governmental benefits. Thereafter, the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 was brought into being to address the special issues of persons with high support needs, who were likely to need lifelong support and care. Following India's ratification of the UNCRPD, a new legislation in conformity with key principles, was passed in December 2016.

The Rights of Persons with Disabilities (RPWD) Act, 2016, recognizes 21 conditions as disabilities, and specifies that a benchmark of 40% impairment must be medically certified for the individual to be eligible for state benefits under the law. Broadening the base of the conditions considered as disabilities, the RPWD Act includes a greater number of conditions that render the individual disabled, which were not included in the previous legislation. Under the broad category of 'Physical Disabilities', the sub-types of Locomotor Disability, Visual Impairment and Hearing Impairment are listed.

Locomotor Disability refers to "a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal or nervous system or both". Under this category, a) "leprosy cured persons", (b) "cerebral palsy", (c) "dwarfism", (d) "muscular dystrophy" and (e) "acid attack victims" are included.

Visual Impairment includes a) 'blindness' and b) 'low vision', with clearly specified ophthalmological measurements defined to determine the nature and extent of the impairment.

Hearing Impairment includes a) 'deaf' and b) 'hard of hearing', with specified audiological measurements to define the nature and extent of the impairment.

The second broad category is 'Intellectual Disability', defined in the Act as "a condition characterized by significant limitation both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behavior which covers a range of every day, social and practical skills" which includes a) "specific learning disabilities", i.e. deficits in processing spoken or written language, that may manifest as a difficulty to comprehend, speak, read, write, spell, or do mathematical calculations, such as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia; and (b) "autism spectrum disorder", which refers to a neuro-developmental condition that significantly affects a person's ability to communicate, understand relationships and relate to others.

The third category, 'Mental Behavior' refers to "mental illness", defined as a "substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, and capacity to recognize reality or ability to meet the ordinary demands of life" and is distinguished from 'retardation' or intellectual impairment.

Disabilities resulting from (a) *chronic neurological conditions*, such as (i) multiple sclerosis (ii) Parkinson's disease; and (b) *blood disorders*, such as (i) 'hemophilia' (ii) "thalassemia" and (iii) "sickle cell disease" form the fourth category.

The fifth category refers to 'Multiple Disabilities', including deaf blindness, i.e. a condition in which a person may have combination of hearing and visual impairments causing severe communication, developmental, and educational problems.

Provision has also been made to include 'any other category', as may be notified by the Central Government.

The new law has notified a number of conditions that did not come under the purview of the previous act, and has attempted to bring on board a comprehensive range of conditions that encapsulate the diversity of disability.

Questions/Discussion

Do you agree with the way Disabilities are classified under the Rights of Persons with Disabilities (RPWD) Act, 2016?

1.7 The Indian Reality

It would be apt to conclude the module with a look at the reality of disability in India and the challenges that lie ahead.

Let us start with some facts and figures.¹⁵ As per Census 2011, out of a population of 1.21 billion in India, about 26.8 million people, i.e. 2.21% of the total population, are disabled. This figure, arrived at by including eight broad categories of disabilities, namely, disability in seeing, hearing, speech, movement, mental retardation, mental illness and 'any other', is widely recognized as an underestimation. The reasons could be stigma associated with disability and the resultant reluctance of people to report it, and the invisibility of disabled people who are hidden away from public view and often considered 'non-persons'. Of the total disabled population, 56% (15 million) are male and 44% (11.8 million) are female. The majority (69%) of the disabled population resides in rural areas (18.6 million disabled persons in rural areas and 8.1 million in urban areas). The most prevalent disabilities are disability in movement, at 20%; disability in seeing, at 19%; disability in hearing, also at 19%. Age-wise, the highest number of people is in the age group 10-19 years, at 4.62 million. The number of children with disabilities in the age group 0-6 years stands at 2.04 million, or 1.24% of the total children of that age group.

With regard to educational profile, 45% of the total disabled population is illiterate. Around, 13% have up to matric/ secondary education, and 5% are graduates and above. With regard to employment, 36% of the total disabled persons are counted as workers; within this, females form a smaller proportion. The total number of disabled non-workers is 17 million; amongst them 46% are male and 54% female. With regard to marital status, 46.87% of the

¹⁵ Ministry of Statistics and Programme Implementation, 2016. *Disabled People in India: a Statistical Profile*. http://mospi.nic.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf

total disabled persons are married at the time of enumeration, whereas 41.72% never married, and 10.29% are widowed.

We see that in India, with its huge population, structural inequalities, rigid social hierarchies and precarity of life and livelihoods, the vast majority of disabled people struggle to obtain basic social goods and access to services such as healthcare and education. Within the disabled population, as with the rest of India, glaring inequalities are apparent. Upper class, urban educated, English speaking elites are the ones who set agendas and are most visible. For them, issues of reservations in jobs and higher education, access to air travel and similar entitlements are major issues. Disability Rights Activism and Disability Studies Scholars have sometimes been accused of being urban-centric and disconnected from the grassroots, where talk of rights and entitlements rings hollow. Disability in a poor laboring or agricultural family can spell ruin, and lack of access to welfare and social security is a critical issue that needs to be addressed. With regard to gender issues, there is a dire need to address the issues of lack of access to health care, education, and prevalence of sexual abuse and exploitation. The disabled girl child in a poor or Dalit family faces multiple marginalities and extreme devaluation. The Indian reality also places immense burden on the family, which is the sole source of sustenance and life-long support and care for persons with disability, often at the cost of the well-being of other members. The vicious cycle of disability, poverty, gender and oppression is very hard to break. Concerted action, strong social policies, entitlements and service delivery are the need of the hour.

Questions/ Discussion

Identify a person with disability in your social/familial/professional circles. Write an account of their lives, experiences and challenges. How do social attitudes and barriers affect their lives?

Conclusion

In conclusion, we see that disability is one of the major issues of the human condition that has emerged center-stage, along with other more mainstream areas like gender, caste and class. As a category of difference, disability cuts across classes and cultures, and can strike anyone at any time. While its links with poverty are well established, affluent countries too experience age related disabilities and chronic conditions. Disability has both medical and social dimensions, and can only be adequately understood by carefully examining the connections between bodily impairments and the social and cultural context within which they are understood and accommodated. Disability is an evolving concept, and as an administrative category, it is also developing and bringing on board new understandings and classifications. The field of Disability Studies has emerged as an exciting one for research into this crucial dimension of the human condition.

Activity

Small groups can be formed where the meaning of disability and what it means to be a person with disability can be discussed.

1. Who is a person with disability? What kind of image do you think of on hearing the term disability?
2. Do you have a disability? Have you ever felt that like a person with some disability?
3. What are the barriers that you experience when you go to school/college/job/public place?
4. Have you been subjected to stares, giggles or ridicule by other people? How do you feel and what do you do?
5. Discuss the typical ways the society looks at persons with disabilities.

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2. Gender¹⁶

Ashika Bhargav

Objectives

This module will help the reader to understand:

- Different meanings and definitions of the concept ‘Gender’
- How ‘Sex’ is different from ‘Gender’
- The meaning and different forms of patriarchy
- The relationship between gender and disability

2.1 Introduction

Gender is an undeniable reality of our social existence. It is one of the first social identities that we notice in a person. Our interaction with a person is largely based on their gender. Gender permeates everyday life so deeply that often, the first statement made after a child is born is ‘It’s a boy/girl!’ and the ‘sex determined at birth’ for children shapes the way they will interact and negotiate with the world.

‘Sex’ is determined at birth and hence considered natural, while the social behaviors, roles and responsibilities associated with it that follow later are largely understood as ‘gender’, which is socially acquired and shaped. It is commonly believed that sex at birth, for a person remains constant whereas gender changes over time and across cultures. While sex is considered natural and gender as social, the binary is not as simple as it appears. This issue will be discussed in this module.

Patriarchy is the social system and ideology which gives power to men in our society over women. The oppression women have been facing over years owing to their gender is a direct result of a hierarchical system of oppression based on gender identities. The social order and functioning in a patriarchal society gets framed in a way that men by virtue of their gender exercise power over women. Consequently, women are oppressed and violated in patriarchy just because they are women. The oppression women face increases multifold when other social factors such as caste, class, religion, ability, ethnicity and linguistic proficiency also overlap and add to the oppression. Women with disabilities fall in this hierarchical system of oppression where they are at the receiving end because of their identity as disabled woman. The intersection of patriarchy and able-bodied structures leads to the double oppression of women with disabilities.

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2.2 Understanding Gender

There is no individual without gender. Human beings are categorized in either of the two categories, man or woman, which seem to be self-evident. For example, a child who was born female grows up to become a girl and later a woman. She is likely to have long hair, pink dresses, dolls and teddies as toys and would eventually get married to a man and become a mother. Similarly a child born male would grow up to become a boy and man later. He is likely to be rough and tough, would wear shirt and pants, cars and guns as toys, and later get married to a woman with whom he would have children. This sounds perfectly natural. In the above example, however, what if the boy-child wanted to play with dolls and preferred wearing dresses as he grew up, and wanted to marry another man instead of a woman? Then it would not sound alright because his 'feelings and wants' would not fit the expectations, society has of him. His expression of himself would not be in synchrony with his gender identity.

Hence we can understand gender as socially constructed roles and relationships, personality traits, attitudes, behaviors, values, relative power and influence that society ascribes to individuals based on their biological sex. Gender in a particular society lays down what it means to be female or male at a given time. Gender roles vary greatly in different societies, cultures and historical periods. For example, women living in rural Uttar Pradesh may be expected to dress in a particular way, schedule their day caring for children and running households, and not step out of their homes alone. Whereas most women living in a city in the United States would dress up differently, and might schedule their day in a different manner, perhaps engaging in paid work to a greater extent. Gender roles also depend on socio-economic factors, age, education, ethnicity and religion. Although they are deeply rooted, gender roles change over time, since underlying social values and norms are not static.

In one of the first works on Gender, sociologist Ann Oakley gave the following definitions: 'Sex' is a word that refers to the biological differences between male and female: the visible difference in genitalia, the related difference in procreative function. 'Gender' however is a matter of culture: it refers to the social classification into 'masculine' and 'feminine' (Oakley, 1972: 16).

This would mean that sequentially Gender follows Sex. i.e., sex of a person is determined first and then gender is ascribed. This will be discussed in more detail in the next section. It is important to understand certain other terms related to Gender which are used frequently, like gender roles, gender identity, cis gender and Trans.

Gender roles – Gender roles are a set of behaviors and attitude that the society prescribes for an individual based on their perceived sex. These are a set of roles a man or woman is expected to follow and perform. To elucidate, a woman is expected to be a good mother who should prioritize her home over career. She should have a gentle personality and dress in a feminine way.

Gender Identity – This is a person's sense of belonging or not belonging to a particular gender. Gender identity for a person may or may not coincide with the sex at birth. It may also vary with time or culture. For example, a child could be born with female genitals and hence be declared female at birth and expected to grow up a girl. But later the girl may not feel that

she belongs to the feminine gender but would relate more with identifying herself as a man. So here, sex at birth and gender acquired later are not the same.

CisGender – A Cis Gendered person’s sex at birth and gender acquired later is the same.

Trans – A Transgender person’s sex at birth and gender acquired later are not the same.

Questions/Discussion

Why is being Cisgender regarded as more ‘natural’ than being Transgender?

2.3 Sex: Gender = Natural: Social?

The terms sex and gender are often used interchangeably, replaced with each other for convenience of social acceptance. However, the two terms do not refer to the same thing. Definition of sex, as per Oxford Dictionary is “Either of the two main categories (male and female) into which humans and most other living things are divided on the basis of their reproductive functions.” So we can understand ‘sex’ as the biological category of male and female, which is determined primarily by examining the genitals of a new-born at birth. A commonsensical understanding based on the exterior genitals (or sex organs) tells us that a new-born with a visible penis and scrotum is a male, and one with a vagina is a female. However, sex of a person as a biological and anatomical category is established on the basis of ‘sex markers’ which are not only the gonads (penis or vagina), but also hormones and chromosomes. (Fausto Sterling, 2000).

As per the biological sex markers, a ‘male’ and ‘female’ are established if they have, respectively:

Male – Penis and Scrotum (external at birth), Testosterone hormone, XY chromosomes.

Female -- Vagina and Vulva (external at birth), Oestrogen and Progesterone hormones, XX chromosomes.

Determining sex of a person is in fact not a simple process, because the above given combination of sex markers may not be present in the same arrangement in all individuals. The indications we look for in determining ‘the sex’ of a person, like genitals, gonads, hormones and genetic pattern can be very complex. The more we get into deciphering this complexity, the more complicated and challenging it becomes. The whole process of determining a person’s exact sex is very complex as it may be based on any one, or more than one, of these indicators, depending on the cultural context. For example, the sex of a new-born child is decided by the doctors primarily by looking at the genitals, whereas in the sporting community one may have to undergo genetic tests to reaffirm one’s sex. This is because excess strenuous activity increases the level of male hormone Testosterone in the body for both men and women. In some other cases, sex of the child is determined not by the visible genitals, but by the capacity to give birth (Fausto Sterling, 2000)

Here, it is interesting to look at the case of two Indian sportswomen, Pinki Pramanik and Santhi Soundarajan, both of whom were made to undergo medical tests to check whether they

qualified as 'women'. In the infamous case of Pinki Pramanik, an international medal winner athlete, a rape complaint was filed by her live-in partner, who claimed that Pinki had raped her over time and was a male, rather than female. Despite Pinki's claims that she has been a woman all her life, she was denied bail and put in the male cell in police custody. What followed was a series of humiliating tests to 'check' her 'womanhood', all without her consent, by drugging her. She was physically checked for the presence of female genitals, made to undertake hormonal and genetic tests. The medical report, prepared by Dr. B.N. Kahali, termed Pinki as a 'male pseudo hermaphrodite' who is not a female, but cannot be termed a male (Marwah, 2013).

In the case of Santhi Soundarajan, a winning athlete at Asiad Games, who was stripped of her medals as she failed to qualify 'Gender tests' in 2006. 'Gender tests' were conducted by a gynecologist physically examining her, and an endocrinologist testing her blood samples. Not all sportspersons are made to undergo gender tests but only those who are suspected to have something 'wrong' with their assigned gender. In Santhi's case a chaperone saw something unusual while she was urinating and hence she was made to undergo the gender tests. Her condition was described as Androgen Insensitivity Syndrome where she had Y chromosome in her genes but had female genitalia (Shapiro, 2012).

In both the cases the claims of the two women, that they were women, were dismissed. They were told since birth that they were women, were brought up as girls and women, felt like women, behaved like women, yet they had to bend in front of the 'biological truth' that they were not women. This also suggests that our bodies are prone to scrutiny all the time. Our bodies are understood to be made up of different features which ultimately get categorized into the male-female binary.

The presence of intersex persons challenges the binary of the sexes; in order to maintain the constructed idea of the binary of the sexes as natural, intersex infants are 'worked upon' and manually made to fit into either of the two sexes. If the new-born has visibly clear genitals of a particular sex, he/she is declared to be of that gender. However, if the new-born has ambiguous genitalia, the hormones and genetic make-up of the new-born is referred to, in order to determine whether the genitals are male or female. In either of the cases, the underlying assumption is the idea of a perfect genital shape and size of a vagina or penis which are influenced by culture (Kessler, 1990). The fact that medical experts, in the case of an intersexed new-born, look at the option of either male or female sex, proves the regulatory nature of 'sex'.

Questions/Discussion

How is sexual identity determined?

2.4 Patriarchy

Patriarchy originated from the Greek word, *pater* (meaning father and arche- meaning rule). It is the anthropological term used to define the social condition where male members of

a society predominate in positions of power. So the word patriarchy refers to any form of social power given disproportionately to men owing to their sex.

According to feminist historian Gerda Lerner, patriarchy means “the manifestation and institutionalization of male dominance over the children in the family and the extension of male dominance over women in society in general.” It implies that men hold power in all the important institutions of society and that women are deprived of access to such power. Lerner adds that women are a party to their own subjugation because they have been taught to internalize their own inferiority (Lerner, 1986: 239), Lerner discusses the close links between patriarchy and sexism, which mutually reinforce one another. Sexism defines the ideology of male supremacy, superiority, and beliefs that support and sustain it (Lerner, 1986: 240).

So it is not only men who perpetuate patriarchy but women too. However, because patriarchy as a system of oppression believes in male supremacy, women are at the receiving end. Patriarchy also harms men by forcing them to adhere to norms of masculine behavior. Just as there are for women rules and norms on how they should present or express themselves, there are norms for men too. Both men and women are expected to adhere to normative femininity and masculinity standards respectively. The creation of set rules about femininity and masculinity and gender roles is a result of patriarchy.

Feminist theory establishes that patriarchy is the root cause of women’s oppression and violence against women. Patriarchy coupled with other systems of oppression causes multiple layers of subjugation that women face. So patriarchy can be understood as having multiple hierarchies which results from its intersections with other systems of oppression. Some of the intersections of patriarchy with other forms of oppression are discussed below.

Capitalist Patriarchy – It is based on the premise that gender relations in contemporary times are structured on capitalism as well as patriarchy which are interwoven. Writers such as Zillah Eisenstein (Eisenstein, 1977) believe that the two systems are closely linked and interdependent on each other so no system of oppression can be understood in isolation. Heidi Hartmann (1976, 1979, and 1981) discusses patriarchy and capitalism as separate forms of oppression but which cannot be understood in isolation. She states that within the paid workforce, occupational segregation is practiced (keeping one kind of jobs for women) while men keep the high paying jobs for themselves. Within the household, women’s labour is unpaid and women work more than men. Socialist feminists such as Hartmann and Eisenstein (full names like Juliet Mitchell, Heidi Hartmann, Zillah Einsestein) have emphasized the economic, social, and cultural importance of women as people who give birth, socialize children, care for the sick, and provide the emotional labor that creates the realm of the home as a retreat for men from the realities of the workplace and the public arena (Walby, 1990).

Race and Patriarchy – The systems of oppression do not have the same implications for all women. Women of colour are highly disadvantaged in the paid labour market as compared to their white counterparts owing to racial discrimination. Black feminists such as Bell Hooks (1992), Angela Davis (2011) and Patricia Hills Collins (1986) through their work have cautioned against the generalization of women’s experiences. Walby has argued that ‘family’ becomes a site for resistance and solidarity against racism in the case of women of color, as opposed to white women’s claim of family as a major site of oppression by men (Walby, 1990).

Brahmanical Patriarchy – Brahmanical Patriarchy is a term coined by Uma Chakravarti which shifts the focus on women as individuals to women as members of families, communities and castes. She discusses women as gatekeepers of their castes and hence points of entrance to the castes. In the upper-caste Hindu texts women are presented as the cause of moral panic because it is through women, who are supposedly uncontrolled and corrupt, that caste transgressions take place. According to the upper caste ideology, women need to be restrained and controlled in order to maintain caste purity or else the social order will collapse (Chakravarti, 1993).

Questions/Discussion

How are sex, gender and patriarchy connected?

2.5 Intersections of Gender and Disability

In patriarchal societies women are subjected to discrimination owing to a gender hierarchy which places men on top. Women with disabilities experience much more discrimination than non-disabled women as they negotiate the double oppression of being disabled, and being a woman with disabilities.

Understanding disability through a gendered lens is required to get insights into the multiplicity of oppression a woman with disability has to face. A woman with disability has to face stigma and functional limitations due to her disabilities as well as face discrimination that all women have to face in a patriarchal society. In the physical social space, the stigma attached to being a disabled person becomes a barrier to social interaction. The situation is worse for a woman with disability, who occupies a secondary position in a patriarchal setup by virtue of being a woman. The stigma of being a woman, coupled with that of disability prevents women with disability from claiming their rightful social position.

To gain validation in society, a person needs to perform the gender roles assigned to their gender identity. For women, gender roles range from being good cooks to lovers of shopping to being caregivers and so on. Women with disability may not qualify for these roles, hence are further rejected by society. Owing to their disability, these women may be restricted in performing gender roles expected by society. Nobody can escape gender socialization, but in case of persons with disability, gender socialization is limited because of inaccessibility to social spaces and spheres (Zimmerman and West, 1987).

Talking about invisibility of women with disability, Susan Lonsdale states that women are anyway seen less in public (physically), and women with disability are rendered invisible owing to their disability. Since traditionally women have been understood as passive, many policies framed for women with disability are ‘things that are done to them rather than with them’ (Lonsdale, 1990).

Women with disability are on the margins of society, and also engulfed in several identities of caste, religion, class and so on. Clubbed with other forces of oppression such as poverty, women with disability must struggle to find the bare minimum to sustain their lives. While talking about opportunities for disabled girls and women, there are several factors that

come into play, especially in the context of India. One cannot ignore caste, class, region, religion, and type and degree of disability when referring to education and job opportunities for disabled women.

The class caste intersection with disability becomes very important when talking about access to opportunities for the disabled in general, and women with disabilities in particular. Disabled women from middle and upper class families have better educational opportunities compared to those of the lower class. Parents can shell out more money to educate their daughters but in the case of families with financial constraint, parents prefer marrying them off or keeping them at home because they cannot afford additional equipment such as wheelchairs, hearing aids, tape recorders, etc. which may be required by women for assistance in their education. If in a family with limited resources, there are two children with disabilities, a boy and a girl, parents are likely to spend money on education and accessibility aids for the disabled boy child but not for the disabled girl child.

Patriarchal ideas about beauty affect all women; however the implications of those standards of beauty for women with disability are twofold. The ideal body type is always based on an able-bodied woman. This constant comparison of their bodies with the culturally represented 'able-bodied women' leaves women with disability in uncertainty about their own bodies. The notions of beauty, perfect body etc. create a whole definition of femininity and compel women to resort to add-ons/ enhancers present in the market. On the other hand, women with disability struggle to bargain with their own bodies while exploring their femininity. Sometimes there is undue pressure on them to adhere to these norms forcing them to feel dejected by their own bodies (Addlakha, 2007, 2008).

The idea of the ideal body when combined with notions of femininity, engulfed in patriarchy, forces all women to subject themselves to the degrading practice of continuous evaluation of their bodies. The ideas about an ideal feminine-body are derived from the sexual and aesthetic norms of a society which is patriarchal and considered primarily non-disabled (Addlakha, 2007, 2008). Under the patriarchal setup, women have only two representations to choose from, one being the unmarried morally upright woman and second, the married wife/mother. Women with disability struggle to locate their selfhood, within these two representations. The ideal unmarried woman is assessed by her femininity, beauty and physical attractiveness. Women with disability find it difficult to relate to such ideas of beauty and attractiveness. Moreover, women with disability are assumed to be unfit to take care of familial responsibilities of a wife and mother owing to their non-normative bodies. Young women learn and take responsibility of household work but it does not apply to women with disability, who get discriminated against in their families and may hence be 'excused' from household chores. The highly patriarchal nature of society with its prescribed gender roles emphasizes the gender identity of women with disability and at the same time underlines their difference from a normal abled body woman. Women as they reach late adolescence and young adulthood are expected to pay attention to and comply with the standards of 'normalcy' with regard to facial features, hair length, and clothing style and so on. Women with disability are either burdened and pressurized into following these norms, like many other women, or excluded from the

entire process of being feminine. They are seen as lesser women and 'excused' from the burden of 'grooming and polishing' themselves to appear 'feminine'.

Although feminists are critical of ideas around beauty, which can be oppressive for some women, it is essential to recognize that women with disability have as much right to womanhood and femininity as non-disabled women. Women with disability express their desire to be seen as feminine, to identify with a gender by dressing, grooming, behaving like a 'woman' should (Addlakha, Price & Heidari, 2017).

Questions/Discussion

How do general ideas of femininity impact the lives of Women with Disabilities?

Conclusion

Gender is one of the most important analytical categories when it comes to studying social systems. As discussed in the module, no individual is born or lives without having a gender identity. However, gender is fluid and it may change with time and different socio-cultural settings. Other social identities intersect with gender to produce a range of experiences for women based on their social location. Gender forms the basis of the social system of discrimination and oppression called patriarchy which gives power to men. Patriarchy also intersects with other forms of oppression and lays out a graded system of oppression. Disability becomes one of the important social categories with which gender intersects. Women with disabilities face double oppression because of their gender and disabled identities.

Activity

Activity 1: Participants can be encouraged to give their understanding of the differences between men and women within their communities. The following statements can be used as cues to start a discussion on the differences between sex and gender. The participants are asked to decide which statement denotes characteristics/behaviors based on sex and which are socially constructed (gender). Request them to explain why they think so.

- Men earn and women take care of the household.
- Women give birth to babies, men don't.
- Women are good caregivers of children and the elderly because they are naturally good.
- Men have moustaches.
- Women cannot carry heavy loads.
- Women are scared of working outside their homes at night.
- Men's voices break at puberty, women's don't.
- Women are emotional and men are rational.
- Women have long hair and men have short hair.
- Boys are good at mathematics, girls are not.
- Cooking comes naturally to women.

Activity 2: Consider two families with two children each, consisting of a girl and a boy, in each household. One family lives in a village and come from a poor socio-economic background. The other family lives in an urban setting and is well-off. In which setting do you think is the greater likelihood of the girl child going to school? Can you outline the factors to support your answer? Now let us consider a scenario where the girl belonging to the rural household has a disability. Compare and contrast the opportunities for all the children (include all four children).

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3. Violence¹⁷

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Objectives

This module will help the reader to understand:

- Define forms and kinds of violence against women with disabilities in India
- Understand ways in which violence is perpetrated against women with disabilities
- Elaborate different sites of violence encountered by women with disabilities in India

3.1 Violence

The World Health Organization (WHO) defines **violence** as the intentional¹⁸ use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development, or deprivation. The concept of power underlies all forms, types and reasons of violence. Power becomes evident when a person or a group of people is able to control and influence lives of people who are being controlled. Violence is socially constructed because ideas of what is considered as violent vary according to specific socio-cultural and historical conditions.

Violence is multifaceted because there are many different forms of violence, which are exhibited in a wide range of contexts. Violence can be physical ('aggression', 'abuse' or 'assault'), but it can also be verbal (bullying, humiliation or intimidation). Physical violence involves beating, stabbing, hurting and maiming someone. Verbal violence involves taunts, comments, aspersions and shouting. It can be overt and visible like beating or rape but also covert expressed through language and literary works, abstraction, interpretation and representation, and in the violence of censure. Non-physical attacks can be made against the gender, race or sexuality of the victim, or even professional integrity. Violence can be individual or collective, interpersonal or institutional, national or international, symbolic or structural. The context may be private or public and the victims may be family members, acquaintances or strangers. Violence can have mental (psychological), social and/or material consequences.

- Example of Physical Violence: When a man hits someone on the street or throws acid on a woman; when a father beats his children or a thief stabs a victim.
- Example of Verbal or Emotional Violence: When girls are taunted in families or wives are subjected to insults in marital family or when men pass comments or whistle at women on the streets.

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¹⁸ This report can be accessed at

https://www.who.int/violence_injury_prevention/violence/world_report/en/summary_en.pdf

- Example of Group/ Collective violence: Caste based or gender based violence
- Example of Institutional Violence: School or Employment policies that deny entry to certain groups of people
- Material consequence of Violence include physical hurt or financial constraints
- Social Consequences include ostracism, avoidance etc.
- Mental consequence of violence include depression, trauma even mental illness

Most forms of violence are seen as **structural violence**, wherein some **social structure** like caste, class or gender or **social institutions** like the state, family or school that wield power, construct ideologies that legitimize different forms of violence for instance crime as a form of violence is punishable by the police which is an institution of the State. The ideologies support a power system wherein social structures or institutions cause harm to people in a way that result in under-development or deprivation. Because structural violence affects people differently in various social structures, it is very closely linked to social injustice. Structural violence and direct violence are said to be highly interdependent, including family violence, gender violence, hate crimes, racial violence, police violence, state violence, terrorism, and war.

Questions/Discussion

What is common amongst all the kinds of Violence discussed above?

3.2 What is Violence against Women?

Violence against Women (VAW), also known as **gender-based violence** and **sexual and gender-based violence (SGBV)** is, collectively, violent acts that are primarily or exclusively committed against women and girls. The Convention on Elimination of all forms of Discrimination against Women (CEDAW 1979)¹⁹ defines Gender Based Violence as a result of gendered roles and ideologies prevalent within a society or culture. Usually women are implicated in such gender based violence as a direct consequence of their subordinate status in society and their increased vulnerability to violence. The UN Declaration on the Elimination of Violence against Women²⁰ (1993) states that violence against women is a manifestation of historically unequal power relations between men and women and violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. The definition

¹⁹ Available at http://www.health-genderviolence.org/sites/default/files/download/m2_handout_cedaw_rev2013_1.pdf

²⁰ United Nations, General Assembly, *Declaration on the Elimination of Violence against Women*, A/RES/48/104 (20 December 1993), available at <https://www.un.org/documents/ga/res/48/a48r104.htm>

of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. These definitions of VAW as being gender-based are conceptualized in an understanding of society as patriarchal, signifying unequal relations between men and women. The human rights of women negated through gender based violence include, but are not limited to

- (a) The right to life;
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- (d) The right to liberty and security of person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;
- (h) The right to just and favorable conditions of work.

In Europe, violence against women has been categorized in the following manner, to include violence carried out both by individuals as well as states:²¹

- a. violence occurring in the family or domestic unit, including, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honor, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages
- b. violence occurring within the general community, including, rape, sexual abuse, sexual harassment and intimidation at work, in institutions or elsewhere trafficking in women for the purposes of sexual exploitation and economic exploitation and sex tourism
- c. violence perpetrated or condoned by the state or its officials such as war rape; sexual violence and sexual slavery during conflict; forced sterilization; forced abortion; violence by the police and authoritative personnel; stoning and flogging
- d. Violation of the human rights of women in situations of armed conflict, in particular the taking of hostages, forced displacement, systematic rape, sexual slavery, forced pregnancy, and trafficking for the purposes of sexual exploitation and economic exploitation.

Questions/Discussion

- a. What is the difference between Gender based Violence and violence in general?

²¹ "Recommendations of the Committee of Ministers to Member States on the Protection of Women against Violence" (PDF). Council of Europe Committee of Ministers. 30 April 2002. Retrieved 3 April 2016.

3.3 Violence against Women with Disabilities

The pervasive nature of violence against women with disabilities can be understood both in terms of incidence of abuse and the nature of abuse in relation to gender and particular disabilities. Violence against disabled women can be seen at all stages of her life, at different sites where she may be located and in almost all relationships in which she may be involved. Socially constructed differences reinforce negative stereotypes and devalue all women generally, and women with disabilities in particular. Women with disabilities are subjected to violence, both because they are women and because they are disabled. Violence against women with disabilities has been identified as not only more extensive than amongst the general population but also more diverse in nature than for women in general. The nature of violence against women with disabilities incorporates an almost endless list of injustices and maltreatment including unnecessary institutionalisation, denial of control over their bodies, lack of financial control, denial of social contact, employment and community participation, as well as physical, mental and sexual abuse (Cattalini, 1993).

Violence is based on an unequal distribution of power. Clearly, for many women with disabilities, socialization processes in childhood and adulthood that emphasize their vulnerability and encourage compliance place them in disempowered positions that exacerbate an imbalance of power. Women with disabilities can often be in situations where other people exercise control and power over their lives. This power imbalance increases the risk of women with disabilities as targets of violence.

Women with disabilities are at greater risk of physical, sexual, and emotional abuse as well as other forms of violence, such as institutional violence, chemical restraint, drug use, unwanted sterilisation, medical exploitation, humiliation, and harassment (Waxman, 1991; Crossmaker, 1991; Morris, 1993; Chenoweth, 1997). Research into the incidence of violence against Women with Disabilities is extremely limited and fragmented due to the lack of data collected on disability by law enforcement agencies and violence support services. The vulnerability of women with disabilities to violence stems from a range of personal factors including social isolation, dependence on carers, etc, along with structural factors like poverty, patriarchy, societal stereotyping, all of which have an impact both on their experience of violence and the seeking of help.

The legal feminist scholar Iris Marion Young identifies the various ways that oppression is expressed toward marginalized groups. She identifies violence as a specific type of oppression, and describes the following elements: oppressed groups experience greater violence, violence is systematic against particular groups – women, blacks, gay and lesbian; violence is a practice, that is, it is rule-bound, collective (may happen in groups) and pre-meditated; group violence is tolerated by the wider community. This marginalization has left women excluded from community life, powerless, poor, denied a real education or opportunity for political decision-making, silenced and vulnerable (Young, 1990).

Women with disabilities are rendered even more powerless in a society that basically does not want to hear or see them. The oppression of women with disabilities goes beyond that of other women in that even the female roles with some value attached which are ascribed to

women in our culture (like that of wife and mother) are not readily accorded to women with disabilities. Deeply rooted in hatred towards people with disabilities and compounded by the cultural oppression of women, abuse and violence towards women with disabilities is easier to inflict. Waxman (1991) asserts that the aim of violence towards these women is not merely to preserve male supremacy but also to preserve non-disabled superiority. Thus women with disabilities in particular, are at greater risk of physical, sexual, and emotional abuse as well as to other forms of violence, such as institutional violence, chemical restraint, drug use, unwanted sterilization, medical exploitation, humiliation, and harassment.

Questions/Discussion

What are the specific forms of Gender based Violence that Women with Disabilities experience?

3.4 Types of Violence Experienced by Women with Disabilities

Women with disabilities in India are subjected to different types and forms of violence in their everyday lives both within families and in the community, within formal institutional setups and in informal personal spaces.

3.4.1 Physical Violence

Women with disabilities are particularly vulnerable to different forms of physical violence in the course of their entire life. Being born as a girl and having or acquiring a disability often ensures that girls with disability are subjected to different kinds of physical violence. This can include being left to die in childhood or being denied access to appropriate nutrition and medical or rehabilitation support. Physical violence can also be evidenced in situations where women with disabilities are denied support in their daily living activities for example for eating, bathing, dressing or going to the toilet. For many women with disabilities, living at home or in institutions, physical violence is evidenced in denial of toilet facilities or access to toilet at night or at all times even during the day. There are many cases reported where disabled girls do not drink water from the afternoon onward and are forced to clamp down on their need to toilet as either family members or hired carers are not willing to take them for toileting after dark.

“I do not drink any water in the evening. As I need help to go to the toilet, my family members discourage me.....who wants to be bothered with the task of carrying me to the toilet? I drink no water and hold my toilet till the carer comes in the morning²².”

– 35 year old woman with locomotor disability

²² Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)’

There are also examples in cases of specific disabilities like intellectual impairment and psycho-social disability, where physical violence takes the form of physical restraint, like tying her to a chair and telling her it is for her own safety, or taking control of her wheelchair and pushing her around against her will. The use of restraints is a form of physical and emotional violence, likely to occur both in residential settings as well as institutional spaces, particularly for women with mental illness, intellectual disability, and severe disabilities.

“My family used to lock me up at first, and then tie me to the bed post when they left home. They said it was to prevent me from harming myself. I did not like it.”²³”

– 27 year old woman with psycho-social disability

Women with disabilities are vulnerable to physical violence from their brothers and sisters-in-law, especially because, even as adults, they are seen as dependent and claimants to natal property. This form of violence can include destruction of (or threats to destroy) the woman’s belongings, possessions and/or pets, including threats to destroy or harm essential apparatus like assistive devices or guide dog essential for the woman to maintain some level of independence.

“My sister-in-law and brother beat me up every time I try to talk to my parents to give me a share of their property. They have also threatened to turn village elders against me and are spreading rumors about me having affairs with men from the town area. I am afraid what will happen to me in future?”²⁴”

– 42 year old woman with locomotor disability, Naroda, Ahmedabad

The degree of physical dependency and the fragility of support may prevent women from reporting abuse by a caregiver. When a woman is dependent upon her abuser for basic personal care, making a complaint may render her even more helpless.

Women with disabilities who get married are subjected to physical violence very similar to that suffered by other women in their marital homes. Disabled girls are more often married with payment of huge dowries, and they are expected to take up full responsibilities of cooking, cleaning and maintaining the marital home. Any perceived gaps in performance of their caring and domestic roles brings on both physical and mental violence, all related to the ideology of the wife/carer as well as disabled women as incapable and dependent. Any perceived lacunae in performance of domestic work invites physical violence in forms of beating and denial of food by husband and in-laws. Such behavior often continues during pregnancy and even after childbirth.

²³ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)’

²⁴ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)’

“Because of the fights, I was not able to have food for so many days. Like at the time of menstruation, I bled heavily, due to which I used to be bedridden whole day, then I was taken to the doctor by my mother. Mother-in-law didn’t even help me much. Instead she complained about me not doing the household chores and that I kept on resting, didn’t do any work. During those days too, I worked a lot. I felt extremely weak from inside, my condition became worse. I worked whole day, changed clothes and worked again. In the night time too, my bed sheet became dirty, due to which I washed it in the morning. I had been extremely ill, but was not provided any help.”²⁵”

– 32 year old married woman with hearing impairment, New Delhi

In public spaces too, disabled women are subjected to physical violence, in terms of sexual harassment and abuse. Sometimes they are also subjected to denial of access to private spaces etc which constitute violence in terms of denial of basic human needs. Often physical violence takes the form of denial of amenities or withholding access to services. Almost all women with disabilities report inaccessibility of toilets in public spaces which is the cause of much physical and mental discomfort for them. Public attitudes that can be interpreted as physical violence is evident in the behavior of public service providers like transport workers. Many women with disabilities report that buses refuse to stop to pick them or drop them at the designated bus stops.

“Sometimes when we are standing at the bus stand, even the bus driver looks at us and then doesn’t stop. Sometimes, when they ask us where we have to go, we tell them. It would be the same bus for that place, but they still tell us that it is not that bus and it will go somewhere else”²⁶.”

- 20 year old B.A. girl student with visual impairment, New Delhi

Questions/Discussion

What do you think are some of the forms of physical violence experienced by Women with Cerebral Palsy?

3.4.2 Sexual Violence

People with disabilities and women with disabilities in particular, are either viewed as non-sexual beings with no sexual urges or needs or, at the other extreme, as people with rampant, uncontrollable sexual urges (Iglesias et al, 1998). Both assumptions make disabled women more vulnerable to sexual violence. Waxman (1991) argues that the aim of violence towards disabled women is not merely to preserve male supremacy but also to preserve non-

²⁵ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

²⁶ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

disabled superiority. Sexual abuse has more to do with oppressive use of power and is related to issues of control and power. Disabled women experience sexual violence within their homes and also in the larger community. Sexual abuse towards disabled women can be evidenced in unwelcome sexual behaviour as physical contact and advances, sexually coloured remarks, showing pornography, and sexual demand, whether by words or actions, sexual assault etc. Sexual assault happens when the offender forces or coerces a person into any kind of sexual activity without freely given consent. In case of a disabled woman, her vulnerability is greatly increased and she may be unable to move away from the place or the person. The assault might include telling her things of a sexual nature she does not want to hear, forcing her to kiss him/her, forcing her to look at or touch his/her genitals, touching her where she does not want to be touched, or forcing her to have sex. Consent in this context, is agreement given by the woman, where both people are of legal age. To give valid consent, the woman must understand what she is physically consenting to, for example kissing, petting etc. She must also understand the sexual nature of the touching, as opposed to non-sexual touching associated with washing or receiving medical treatment. The woman must understand and be able to exercise the right to refuse a sexual relationship.

In India, girls and women with disabilities are represented and viewed as devoid of sexuality. This has a negative impact in two ways, on one hand the sexual needs of the girl/woman with disabilities are completely denied, to the extent that menstruation is seen as a problem and often girls are put on medicine or forced to undergo hysterectomies. Marriage, the legitimate path towards sexual activity, is blocked by families and communities and this amounts to violence as there is no question of choice. On the other hand, because of the denial of sexuality of women with disabilities they become vulnerable to sexual abuse within families, neighbourhoods and communities. Sexual misbehaviour, usually by members of the extended family, can range from staring to inappropriate touching. Episodes of sexual violence often go unreported, either because parents and families brush aside such complaints or as the disabled girls are considered to be at fault in one way or another.

In the context of childhood, sexual violence can be constructed not only as the act itself, but also in terms of the unwillingness of parents to acknowledge it. Sexual assault can also include the offender forcing her to look at sexual pictures or videos, demanding sexual favours in order for her to access services or care, or sexually abusing her under the pretence of educating her about her sexuality. Many women with disability miss out on sex education so when abuse occurs they know something is wrong but are not sure what it is. Sexual abuse in public spaces can also take the form of molestation in the guise of helping a disabled woman, for example while climbing on to a vehicle or alighting from it. Disabled women are also vulnerable to sexual assault as they may trust strangers to help them, who abuse the trust by molesting or raping them.

Questions/Discussion

Give examples of Sexual Abuse experienced by Women with Disabilities which are a direct outcome of their Disability?

3.4.3 Emotional Violence

Emotional abuse refers to harm to a person's self-concept and mental well-being, as a result of being subjected to behaviors such as neglect, severe verbal abuse, continual rejection, physical or social isolation, threats of abuse (which may also be physical assault), harassment, frightening, dominating or bullying. Neglect refers to the harm caused by failure to provide adequate support, food, shelter, clothing or hygienic living conditions. Women with disabilities experience mental abuse and neglect from early childhood, continuous exposure to negative attitudes and denial of their capabilities. For disabled women in India the experience of psychological abuse is subtly ingrained in familial and social practices.

“Yes at home if I am unable to understand something, if I ask my brother who is also studying, if I will ask him ‘Read this to me. I want to hear what is written there.’ People at home will say ‘Don’t disturb your brother’ or ‘can’t you read what is written.’ My brother also tells me ‘you are also learning, don’t you know this!’ Then I feel very bad. My feelings are so hurt, I am so disheartened, that before I say anything, I think whether he will listen to me or not. At home, if I would like to go somewhere, or wish to eat something, if I say or ask for it, it is difficult to get. No one understands at home that I can also have a desire. It is difficult to get it²⁷.”

– 21 year old girl with visual impairment, New Delhi

Because of social attitudes that equate disability with lack of legal capacity, disabled girls are subjected to continuous taunts, negative remarks and aspersions, both within the family as well as in the larger social milieu. Women with disabilities, thus, often have a learned passivity which is especially reinforced in institutional and residential settings.

“Those who are not disabled like us are forced to wear a sari, veil themselves, and are not allowed to move out from their houses but the pressure doubles in case of a disabled woman. People also question if I prefer talking to someone on the phone.²⁸”

– 28 year old married woman with visual impairment working in an NGO, Ahmedabad

For women with disabilities neglect may include leaving a woman in soiled clothes for ‘punishment’, or leaving her for extended periods in bathtubs or beds, or forcing her to eat at a pace that exceeds her ability and comfort. While included within physical abuse, taking away her wheelchair or other aids/equipment that are essential for her to maintain some level of independence, restraining her hands when she needs them to communicate, forbidding any contact with family and friends, threatening to withdraw services or threatening to send her to an institution also results in significant emotional trauma for a woman with disabilities. Women

²⁷ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

²⁸ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

with developmental disabilities and mental illness are at particularly high risk of sexual abuse both as children and adults.

Questions/Discussion

Why are Women with Disabilities at a greater risk of psychological and emotional abuse than women without disabilities?

3.4.4 Financial/Economic Abuse

Financial abuse refers to unequal access or control to shared or personal resources. For example, the disabled woman is often denied the right to control her own finances or a financial guardian may abuse his/her position. It is most commonly seen that disabled women are denied access to any kind of financial resources, which could be as small as pocket money to buy essential things to being denied the share of the natal or husband's property. In a country like India where almost all women are denied access to such financial resources, being disabled is an additional negative point. As disabled women are assumed to have no aspirations or legal capacity, financial resources are systematically denied to them. Even in cases where disabled women are earning themselves they often have no say in how the money is to be spent as family members take over control of the income. Moreover disabled girls living with their natal families are often compelled and pressurized to hand over their savings for the benefit of the family, for example during weddings or financial crises in the family.

“Violence is if someone is not provided with either money, or food at home. In order to buy groceries for home, sanitary napkins, undergarments or to pay the rent of the house, they don't provide money, rather they ask us what is the need of it?”²⁹

- 35 year old woman with loco-motor impairment, New Delhi

Questions/Discussion

How does the absence of the legal capacity make women with disabilities more vulnerable to financial abuse?

3.5 Sites of Violence

Violence against women with disabilities can be seen in 3 kinds of sites – within families and domestic spaces, within institutions, and within communities.

²⁹ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

3.5.1 Familial Violence

Violence within the family is one of the most insidious forms of violence against women with disabilities. Disabled women face physical violence at home, more in terms of neglect and verbal abuse, mostly due to attitudes towards disability. As having a disability and being a woman are both viewed negatively in many societies, the discrimination and hence violence begins often at birth with denial of adequate nutrition and health facilities that affect the survival and potential capacities of girls with disabilities. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

Denial of rights is also evidenced through over-protection, by catering to dependence increasing ideologies by way of which disabled girls are not allowed to do anything at home. Derogatory comments from peers and family reflect a belief that disabled children are incapable and unemployable. Often girls with disabilities are kept hidden at home by their families, less so in childhood but increasingly so in adolescence and adulthood.

“I was kept away from almost everything during the marriage of my brother. Their action made me feel that I am different from them. Secondly, the beautician was there to help everyone in getting ready for the occasion, but there was no one to help me in getting ready for the occasion. In addition, they bought clothes for almost everyone but they managed to forget to buy the same for me³⁰.”

– 22 year old separated woman having polio, Naroda, Ahmedabad

Within family relationships, women with disabilities of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Traditional and modern attitudes converge to further disadvantage girls with disabilities who are seen as unproductive and unmarriageable and hence less valued within families. In adolescence and adulthood this often brings on violence in the family through physical assault, mental torture and denial of property rights and access to shelter. The experiences of violence may be particular to a woman's disability such as withholding of medicine, removing a wheelchair, a ramp or a white cane. All this has an impact on self-esteem and confidence of girls with disabilities. Access to education and a better quality of life is also inhibited by gender and disability based discriminatory behavior and attitudes that deem education not necessary for girls, and irrelevant for disabled girls. Girls with disabilities are often denied chance to enroll in schools, forced to drop out of school due to not only poverty and family demands but also due to mobility problems, communication issues and lack of both schools and families catering to their specific requirements. Gendered norms also affect access to hostels and access to education in residential schools.

³⁰ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

“We have only 2-3 people with disability in our village. Their parents send them to the hostel. They leave their child for once and for all and never come to meet him/her. In fact the hostel authorities had to call their parents many times.... The girls feel very sad about their parents not coming to meet them. We didn't feel good thinking what actually is happening³¹.”

- 25 year old woman with visual impairment, Ahmedabad

Domestic violence needs to be broadly defined in order to take into account the diverse range of relationships women with disabilities may be in. Women with disabilities experience **domestic violence** in situations similar to all women: that is, they are assaulted by someone who is known to them, most likely by a man and most likely in private, in their ‘place of residence’, or in the home of a friend or relative. Within marriage, social attitudes that deem disabled women to be incapable of shouldering domestic responsibilities bring all kinds of violence upon the disabled woman. Within the marital home disabled women are subjected to physical violence both in terms of being forced to engage in domestic activity that is experienced as painful, and through beatings for being unable to cope up with all the work at home. This is invariably accompanied by psychological, emotional, and economic violence. Disabled women’s experiences of domestic violence include emotional and verbal insults, withholding money, threats of abandonment or physical violence, and actual physical violence. They typically involve a combination of several types of violence over a period of time. Spouse’s alcohol use, forced marriage, disputes with in-laws and the tendency for husbands to take their mothers’ side, and suspicions of infidelity are described as key factors.

For women with disabilities domestic spaces may include not only their families and homes, but also their place of residence may be a community-based group home or residential institution, boarding house, shelter, hospital, psychiatric ward, or nursing home. Within these varied settings violence may be perpetrated by a number of people who come into contact with the woman in the course of her life. These may include other residents, co-patients, a relative and/or a carer, whether family member or paid service provider. Thus for disabled women, any definition of ‘domestic violence’ needs to be sufficiently broad to cover spousal relationships, intimate personal relationships (including dating relationships and same sex relationships), family relationships (with a broad definition of relative) and formal and informal care relationships. Women living in a group home, supported accommodations or institutions are particularly vulnerable to violence. In such places of residence women with disabilities are at a distinct disadvantage in that all the power resides within the management hierarchy of the institution.

Questions/Discussion

A home is supposed to be a place for security and care. Why is the home a major site of Violence for Women with Disabilities?

³¹ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

3.5.2 Institutional Violence

The cultural characteristics of institutions encourage a repressive and violent environment. Institutions are generally structured hierarchically with clear delineation of power and authority. In institutional culture, behaviour is shaped by the social structure of the organization, not by individual personality traits (Crossmaker, 1991). Institutional violence may be of two kinds: one, in institutions where disabled people are studying, receiving treatment or therapy, working etc. and two, in residential institutions for disabled people where they may be short or long term residents. Women are more likely to experience physical, verbal and sexual abuse than men within such institutions.

“In the hospital, they make us run around here and there for little things. Even at the time of pregnancy, they make us run. They make us stand in the queue, where we are hardly able to stand. Rarely, a good person would give his place to us. High beds make it more difficult to shift onto them³².”

- 32 year old married woman with Loco-motor Impairment, New Delhi

“I went to the eye doctor. I was alone but I had my driver and my driver has been with us for 20 years. Everyone asked me if my mother has come with me or not. I am like -- it is my eye, and there is one person to hold my hand then why do you need my mother? What is she going to do? What is so special that she can do that I cannot? I have a credit card, I can pay, I can sign, I can decide my medicine and according to me I understand my eyesight issues better than my mother. I am made to wait longer in such situations.³³”

- 25 year old woman with locomotor impairment, New Delhi

Within institutions violence is perpetrated by staff as well as by other patients and visitors. This is because women with disabilities who have to live in institutional or residential settings are away from public scrutiny and with little or no access to police, support services, lawyers or advocates. Crossmaker (1991) explored the nature of institutional abuse against women with mental illness and intellectual disability. Power and abuse are pivotal to the nature of institutions and create the effects of passivity, withdrawal and a loss of sense of self. In this way institutions can create or exacerbate mental illness. There have been instances where sexual abuse has resulted in effects that are diagnosed as mental illness whilst the abuse goes undetected and unexplored.

There is a gender dimension to this incidence of violence -- firstly, women with disabilities are more likely to be in institutions which are “closed” and will often be under the management of men; residents of institutions are more likely to be women; women with

³² Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

³³ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

disabilities are more likely to work in closed environments where the supervisors are male (Catallini, 1993). Motivated by a need for power and control, offenders choose victims who are unlikely to resist or report. Many women with disabilities in service settings fulfil these criteria as they may require personal assistants or support workers (Crossmaker, 1991). Even when women with disabilities do reach out for help or justice, services such as shelters, domestic violence support services, legal services are often inaccessible or do not know how to respond to women with disabilities (Boyle et al, 1988). Women with disabilities, who are residing in varied settings like a community based group home or residential institution, a boarding house, shelter, hospital, psychiatric ward, or nursing home may experience violence perpetrated by a number of people who come into contact with the woman in the course of her life. These may include other residents, co-patients, a relative and/or a carer, whether family member or paid service provider (Frohman 1998, KPMG 2000).

Structural forms of violence include inequalities in access to work opportunities in private or public institutions like denial of jobs and social support. General discriminatory attitudes of potential employers toward women with disabilities were often explained as concerns that they would not be able to “keep up” with colleagues, would be less productive, or would be incapable of completing the work.

“Even after I completed my post-graduation my passion was in teaching. I cleared my UGC-NET also. I appeared for a lot of interviews in schools and colleges. But I was discriminated against every time. They made excuses. I went to a school and that school said okay I, you know, ‘your resume is very nice and you have done this this this, good, very good. But you will not be able to write on the blackboard. So we cannot hire you as a teacher.’ I don’t know in today’s time who uses a blackboard.”³⁴

- 30 year old woman with locomotor impairment working in a call center, New Delhi

“She is being told, ‘you are lame-footed, you cannot lift even a glass of water, and you will work!’ Why because, the office will look ugly. Do you understand? Far from offering a job in any office, no one is willing to offer me any work. I have this experience. ‘If you walk with a crutch, it will diminish the prestige of my office’.”³⁵

- 27 year old woman with locomotor impairment, New Delhi

“One of my friends cleared Indian Administrative Services (IAS), although he was able to manage everything on his own, yet he didn’t get selected in the medical, because according to them, he would not be able to fulfill the responsibilities of IAS. Who are they to decide his caliber, about what he can and what he cannot do? Only on the basis of his disability, he didn’t get selected in the Medical. If you think about it, a disabled

³⁴ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

³⁵ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

person after studying so much, reached until this level, passing the exam of IAS at every step is difficult.³⁶”

– 25 year old woman with locomotor disability, New Delhi

In institutions that women with disabilities go to for work or different kinds of services, they are faced with inaccessible environments and lack of access to toilets and other facilities.

“The doctor’s job is to save the patient. They keep saying, ‘there are a lot of patients like this. We will do the dressing. Wait.’ My gauze would be old. I would feel like insects will attack the bandages. I would be screaming and asking the doctors to do my dressing. They would ask me to stay quiet. ‘We have a lot of patients. A lot of patients come and scream and howl. You are not the only one.’³⁷”

- 28 year old acid attack survivor, Agra

In the absence of accommodating environments and facilities for people with disability, women with disabilities are usually expected to manage on their own. They often feel that requests and complaints are met with indifference or are not taken as seriously as they would have been if they did not have any disability. Often women with disabilities suffer such forms of subtle violence, along with the fear that any objection they make would disadvantage their employment, including recruitment or promotion, or create a hostile working environment.

“The people just think we cannot do anything, it happens, they don’t give us work properly, they will say leave it, you will not be able to do it, why are you giving work to her, she will not be able to do it, they will say this even before judging our skills. Or, they will give you work to create troubles for you, they will give you work that is out of your capacity.³⁸”

- 28 year old married working woman with locomotor impairment, Naroda, Ahmedabad

“She is completely wheelchair bound. She has polio in both the legs. She was there with me during graduation, after which she did masters as well. Then, she started teaching in an Institute, where they used to send the money to her mother, and not give it to her. They also used to keep her in the hostel with the students, bathe in the same washroom, etc. You won’t find this in any other institute, where a teacher would generally get a separate room. So, the day she demanded a separate room, she was asked to pack her bags and they dropped her belongings, along with her wheelchair, outside the institute. In the evening, she asked her mother to take her back from there, so her mother said, ‘Why did

³⁶ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

³⁷ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

³⁸ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

you fight with them? You were getting good amount of money from them³⁹. After which, she called her cousin, who came to rescue her and till then, she kept sitting outside the school.⁴⁰

–34 year old PhD student with loco-motor impairment, New Delhi

Questions/Discussion

What are the different institutions in which Women with Disabilities may face Violence?

3.5.3 Community Violence

Community violence against women with disabilities is expressed mostly in subtle ways. Social and cultural ideas regarding acceptability of women both in terms of their functional capacities and in terms of their reproductive capacities determine the violence meted out to women with different disabilities within society. For women with disabilities who do not physically measure up to able-bodied standards, violence at community level comes in the form of exclusion from routine activities and mental violence in the form of taunts and staring.

“So there are these words that you know, I don't know how to categorize them as abuses but when you say Apahij or when you use the words like Andha, Lula, Langda as a trio. For somebody else it is an identity.⁴¹”

– 24 year old research student with locomotor impairment, New Delhi

Disabled women are excluded from all roles projected onto women in communities – the roles of wives and mothers. Disabled women are not socialized to aspire for any of these roles and discouraged actively through negative comments and even restrictions that prevent them from taking up these roles in society.

“People will also gossip about the way I am dressing, taunting like she doesn't have legs to walk but see her style.⁴²”

- 35 year old woman with locomotor impairment, Ahmedabad

Verbal and physical sexual harassment by strangers occurs regularly in public spaces, trains, and buses.

³⁹ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

⁴⁰ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

⁴¹ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

⁴² Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

“Whenever we walk on the road, they used to say ‘Hey look at her the lame footed, or look at him the lame footed.’ That time we used to think that God has given us such a birth that people call us lame-footed. How sad we used to feel.”⁴³

– 28 year old woman with locomotor impairment, New Delhi

Women are vulnerable to exploitation because of their dependence on others for support and, possibly, as a result of men perceiving them as sexually available. In fact the most common form of violence is to label disabled women as sexually and morally ‘loose’ bad women.

“I usually call the same auto every time, when I am supposed to go anywhere, and this is something that is questioned. People say why I prefer calling the same driver every time. Boss, I feel secure while travelling with him and if I would have the abilities to walk like others than I would have preferred anyone for the journey.”⁴⁴

– 35 year old married woman with locomotor impairment, Naroda, Ahmedabad

There is widespread tolerance of abuse towards women with disabilities within most communities, and very little legal recourse available. It is frequently more difficult for a woman with a disability to leave an abusive situation because of dependency on her partner/carer for physical care, and yet if she manages to leave she may not be able to locate a refuge or support service that is accessible and responsive to her needs. There is generally inadequate knowledge of and/or access to legal mechanisms.

Of particular concern is the seeming tolerance of abuse toward women with disabilities that is widespread in our communities. Many studies and anecdotal evidence record the failure of authorities to identify instances of violence, believe the victim, protect against future violence, or take legal action against the perpetrator. Even when the perpetrator is identified, he/she is charged in very few cases. Victims’ refusal to report is related to a fear of reprisal, of not being believed, of removal of privileges or because victims may be so immune to daily indignities that they may not recognize abuse. This is also supported by evidence that there is failure of treatment and abuse response services to respond adequately to women with disabilities experiencing violence.

Questions/Discussion

What do you understand by Community Violence against Women with Disabilities?

⁴³ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

⁴⁴ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

3.6 Impact of Violence

Disabled women are affected by abuse in multiple ways. Socialization into disabling social attitudes and their own experience of their bodies in restrictive environments influences the ways in which disabled women respond to violence in their daily lives. Anecdotal evidence shows that women with disabilities have extremely poor perceptions of themselves. Low self-esteem is a major barrier to a woman with disabilities leaving a situation of violence. Structural violence is also a pervasive concern. One of the outcomes of a marginalized existence is invisibility; silence is in itself a form of violence. Women with disability often describe experiences in which family members have negated their identity or existence.

Social construction of disability dominates the ways in which people in the community do not expect disabled women to talk about violence in their lives, and the ways in which disabled women learn self-defeating beliefs and negative constructions which force them to endure persistent physical or psychological violence. Being constantly spoken down to or treated as disabled tends to lead to an internalized stigmatization of one's own disability. Feelings about the impact of their physical impairment on their family, and being made to feel a burden, may lead some women to self-blame. Social exclusion and isolation from the family, neglect, and being made to feel a "burden" lead to psychological and physical distress.

Disabled survivors of violence often have a difficult time escaping from their assailants. They are often financially dependent on these individuals, and the physical means of fleeing assault, such as accessible transportation, are often unavailable on short notice. The main barriers to women with disabilities in accessing refugee shelters and other violence services can be grouped into the following areas: communication; information; attitudes; physical environment; accessing/using a service; and, skills of service providers.

Questions/Discussion -

What is the impact of violence on physical, social and psychological well-being of Women with Disabilities?

Conclusion

Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. Gender based violence is multi-faceted because there are many different forms of violence, which are exhibited in a wide range of contexts. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty.

Violence against women with disabilities is widely pervasive in society, more extensive than amongst the general population and more diverse in nature than for women in general. Women with disabilities are at greater risk of physical, sexual, and emotional abuse as well as other forms of violence, such as institutional violence, chemical restraint, drug overuse, unwanted sterilisation, medical exploitation, humiliation, and harassment.

Women with disabilities in India face physical, economic, psychological and sexual violence both within homes, institutions where they may be living and in public spaces. The cultural ideologies that endorse patriarchy and ableism ensure that violence against women with disabilities is perpetuated not only through overt mechanisms but also through covert processes of socialisation that lead to discrimination and denial of rights in different domains of life.

Activity

Small groups are formed where the various forms of violence are discussed with examples being taken from the lives of the group members themselves, as well as others that they know well.

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4. Intersections of Disability, Gender and Violence⁴⁵

Sankalpa Satapathy

Objectives

This module will help the reader to understand:

1. The Concept of Intersectionality
2. Interconnections between Disability, Gender and Violence
3. The multi-dimensional nature of Violence against Women with Disabilities

This module has been subdivided into two main sections. The first section introduces the concept of intersectionality and its significance. The second section presents multi-dimensional characteristics of the violence against women with disabilities within an intersectional framework.

4.1 Introduction

The unfair treatment of women, and of people with disabilities, leads to extreme vulnerability of women with disabilities. Women with disabilities are likely to be exposed to discriminatory behavior in all aspects of their lives by their communities and society in general. The bias against women with disabilities gets expressed in terms of physical, social, economic, cultural, and attitudinal barriers. These barriers prevent women with disabilities from achieving their full potential.

The World Health Organization⁴⁶ defines health as a state of complete physical, mental and social well-being, and not merely the absence of disease. Health is an individual right and a social justice issue. There are several factors which affect an individual's health such as individual behavior, clinical care, socio-economic factors, and physical environment.

Persons with disabilities include those who have long-term physical, intellectual or sensory impairments, which may hinder their full and effective participation in society on an equal basis with others. One or more of the ordinary faculties, such as mobility, hearing, vision, speech, or cognition, may be compromised. The term disability also reflects the difficulties individuals with disabilities experience in their interaction with the environment they live in. Discrimination is very high against persons with disabilities in a society which is built to accommodate the interests of persons without disabilities.

In a similar fashion, discrimination against women is very high in a society which places the interests of men above women. Women are discriminated against in various spheres of life like education, employment, health etc. Women, as well as persons with disabilities, are considered of inferior status, within most societies. Thus, women with disabilities are greatly

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⁴⁶ Available at <https://www.who.int/about/who-we-are/constitution>

compromised on account of both gender and disability. They are in a far more vulnerable position than women without disabilities, and men with disabilities.

Women with disabilities face greater discrimination in areas of education, employment and health. Also, they are at high risk of gender-based and other forms of violence, including abuse by their caregivers. In addition to their increased vulnerability, the institutions of law and justice may not be accessible to them.

4.2 Understanding Intersectionality

The Universal Declaration of Human Rights⁴⁷ (UDHR) by the United Nations states “all human beings are born free and equal in dignity and rights”. The Constitution of India is based on the principle of social justice and human rights. It prohibits discrimination on grounds of religion, race, caste, sex, place of birth. However, social structures and social relationships in our communities are organized around hierarchical systems. The social world is complex and multi-layered. Experiences in the lives of people are influenced by their gender, age, caste, socio-economic status, ability/disability, sexual orientation and religion among others. These factors affect the person’s life, on their own as well as in combination with each other. Thus, a woman is in an inferior position compared to a man in our society. The disadvantage increases if the woman belongs to a Dalit caste. There is a greater chance that the woman would be from a weaker socio-economic background if she belongs to such a caste; she might have less chances of getting an education and a well-paying job. When disability is added to this scenario, the situation for the woman becomes even worse. In the words of a 30 year old woman with locomotor impairment from New Delhi who compared how starkly different the situation for a woman with disability is from a woman without disability -

“Like for a normal girl it is easy, I mean it is not that difficult that they can run and do something like that, but for a disabled it is very very difficult, it is impossible, to save herself, she can’t run, if she has hearing or speech disability then she can’t scream even, so it’s quite challenging to live.”⁴⁸

We find that the different aspects of identity such as gender, caste, socio-economic background, and ability/disability status affect the experiences that a person has in life. This is true for all of us. There are different lines of identity and they provide us various forms of advantage and disadvantage in accordance with the social hierarchy. When there is an instance of oppression, it cannot be explained by one source only. Multiple sources of oppression work together. The interlinking of various factors in creating an oppressive system is intersectionality, which was first described by Kimberle Crenshaw in her pioneering work ‘*Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*’, in the year 1989.

⁴⁷ Available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

⁴⁸ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)’

Society divides people into hierarchical groups based on their gender, caste, class, age, religion, language ability, and sexual orientation, among several other identity markers. If we consider the marginalized position of a poor Dalit woman in our society, it cannot be solely explained by the fact of her being a woman. Her being a Dalit also places her at the bottom of the social caste hierarchy. Her poverty is linked to her being Dalit; Dalits have been historically denied education and employment. Poverty may also deny her the opportunity to attend school as she may be required to work by her family to earn. Thus, the oppressive system cannot be simply explained by one factor such as her being a woman or belonging to a lower caste or her lower socio-economic status. All three factors are interlinked and work together to produce an oppressive system which has placed her at the lowest rungs of society.

4.2.1 Significance of Intersectionality

As humans, we are multi-dimensional. Our experiences are influenced by a host of factors. It is important not to consider our experiences as isolated events but as circumstances which are influenced by different aspects of our identity. Recognizing every aspect of our identity and how it affects our status in society is essential, to understand our experiences as a whole. People with multiple minority identities are more likely to be faced with discrimination. It is also seen that existing legal and policy mechanisms often work against such people. Various structures interact to produce intersectional forms of oppression. Economic factors are not independent from the caste or gender dimensions.

The significance of an intersectional approach is that it recognizes how multiple identities affect lives of people in different ways. Thus, it makes us understand that to find solutions to these problems it is important to understand how different factors are interlinked and work together to create these complex situations. The solutions cannot aim to resist only one factor, when so many other factors are also at work. A multi-pronged approach has to be adopted to work on the causative factors at the same time, if we intend to find efficient solutions to these multi-factorial complex problems.

There are several research studies demonstrating that one's experiences of discrimination have consequences for one's mental and physical health. People with disabilities are more likely to be discriminated against than non-disabled people in all spheres of life. The bias increases manifold in the case of a woman with disability from a lower socio-economic status. The identities of the woman such as her gender, her disability and her socioeconomic status are working against her within their individual capacities as well as their collective effect.

The significance of intersectionality is that it highlights the importance of considering every factor that works to create an oppressive system. No factor is independent of other factors present in the system. An interdependent network of factors is responsible for creating an oppressive system. Solutions to counter the oppression must take a holistic approach, recognizing the different dimensions of oppression.

Questions/Discussion

Why is it important to develop an intersectional perspective for understanding oppression?

4.3 Intersectional Analysis of Gender and Violence

Historically, the differences between men and women were used to create inequalities which led to the development of patriarchy in society. Gender roles were established which determined the way men and women were expected to behave. Social gender roles place masculine traits at a higher position than feminine traits. These ideas teach males to be active, forceful, violent, strong, unemotional, and controlling. Thus, men are expected to be in control of and dominate over their life situations. In contrast, women are seen as passive, caring, obedient and emotional. These expectations from women project them as weak, powerless, and dependent upon men. Men are placed at a higher position than women in the social hierarchy. This type of socialization of both men and women has resulted in reinforcing an unequal power relationship between them. This situation has continued till the present leading to the abuse of power by men, denial of equal rights and victimisation of women in society.

Gender roles are meant to control the behaviour of men and women and these are more restricting in nature for the womenfolk. Compared to men, women are less likely to have an education, be employed in a high paying job and have access to health and legal services. Women are also more likely to be at the receiving end of physical, verbal, psychological, financial and sexual abuse.

Violence against women and girls is one of the most widespread human rights violations in the world. A woman is more likely to experience violence compared to a man, irrespective of the social or economic class or country the woman belongs to. Domestic or intimate partner violence is one of the most common forms of violence against women, where the woman is controlled and maltreated by another member of the household such as a husband/boyfriend. During times of conflict and displacement, violence against women increases many times over. When a woman is exposed to gender-based violence, she can suffer from emotional, mental, psychological, physical trauma, and sexual and reproductive health consequences such as unwanted pregnancies, unsafe abortions, traumatic fistula, sexually transmitted infections including HIV, and even death. Gender-based violence may occur due to several independent and correlated personal, situational, social and cultural elements.

Attitudes of gender inequality are deeply rooted in many cultures. Both overt and covert forms of violence against women are accepted, encouraged and tolerated by social and cultural norms. It is seen as legitimate behaviour for men to behave the way they do because of attitudes like 'boys will be boys; and 'men need to keep their women under control'. Women bear the responsibility of the violent behaviour against them.

Women are taught to adapt their behaviour in ways that are believed to reduce the chances of violence against them. For example women are expected to wear modest clothing to avoid being eve-teased. They are warned against moving in public places after dusk to avoid sexual harassment.

However, it would be simplistic to attribute violence against women to their gender alone. Different women encounter violence in different forms. Experience of violence by each woman is different in its unique way and there are a host of factors at work in each situation.

4.4 Intersectional Analysis of Gender, Disability and Violence

Persons with disabilities are more vulnerable to violence compared to non-disabled people. Both men and women with disabilities are exposed to risk of violence. They face discrimination in accessing education, health, employment and legal services. The negative bias against disability present in society leaves these people in a weakened condition. It leads to high levels of isolation and exclusion from society. People with visual and speech impairments are more likely to be attacked because of communication barriers. Their dependence on other people (caregivers) also leaves them open to abuse. The caregivers may exercise power over them by intentionally not giving the needed care or assistive devices and the abused person may fear reporting the abuse because they will lose their help. Men and women with disabilities may be discouraged from having romantic/sexual partners, marriage and children. They may face ridicule from the community because mostly it is thought that persons with disabilities are asexual beings.

Women with disabilities are more likely to be prone to discriminatory behavior than men with disabilities. Women with disabilities experience many of the same forms of violence all women experience. However, the violence rates are extremely high when gender and disability intersect. Women with disabilities suffer a double discrimination. On account of gender and disability, they are more likely to be confined to their homes, which reduce their chances of participation in public. They are also more likely to experience domestic violence and other forms of gender-based and sexual violence compared to non-disabled women and men with disabilities. Also, women with disabilities are dependent on their caregivers so are more likely to be vulnerable to abuse from them. They are likely to experience abuse over a longer period of time and likely to suffer more severe injuries as a result of the violence.

Disability is experienced differently by men and women. Men with disabilities are considered weaker than men without disabilities but it is important to remember that they identify with being a man to feel strong and powerful. For women with disabilities, both identities (that of being a woman and that of being a person with disability) are considered weak and inferior. Also, women with disabilities are positioned lower in society than women without disabilities because they do not fit into the traditional caregiver roles expected of women. Disability increases the perceived helplessness and weakness of these women.

Women with disabilities face hostile attitudes in society as well as in their workplace.

A 24 year-old woman with visual impairment from a rural area near Jodhpur (Rajasthan) expressed sadness over the fact that the people in her village are jealous of her because according to them she draws a salary from the government without doing anything and 'people like her' should not be given jobs. Also, women with disabilities may be exposed to violence within their own families.

“For someone walking with the help of crutches or a wheel chair, they are her support. If her family (her husband or mother-in-law or father-in-law or any other family member) does not support her to move ahead with strong willpower, it will be like keeping her in a closed door house torturing her mentally. They may not torture her physically due to fear of what people may say when they see them torturing a disabled person. If she is mentally tortured no one can know about it. Within the four walls she will keep crying and stays inside.”⁴⁹”

- 26 year old, single woman with loco-motor impairment, Orissa

A woman with visual impairment shared how even families of girls with disabilities are discriminated against by others in society:

“My friends have shared that normal people make comments like, ”Do not touch or hold these blind children, we may turn blind”. Once there was a proposal for one of my seniors’ brother. The people from girl’s side said “we will not give our daughter in marriage in a family where there is a blind child, a child born to our daughter may become blind too.” They torture them, don’t like to even touch them, because of blindness.”⁵⁰”

- 24 year old woman with visual impairment, Odisha.

‘An acid attack survivor who enrolled in college, was irregular in attendance. She explained that the reason for her irregular attendance was the awkward manner in which her college mates stared at her, which was a source of distress for her. They also asked her uncomfortable questions about her facial scars.’⁵¹

- 45 year old woman, acid attack survivor, Agra

Structural or institutional violence also maintains women in a subordinate position within the family and community. The difficulties that women, particularly poor women, face to access health and legal services are an example of structural violence. Economic conditions can act as triggers for gender based violence. Such violence may lead to conditions requiring healthcare and/or legal services thus putting a strain on the already poor household financial condition. It may impact the health of the woman thus reducing her productivity. Women with lower levels of literacy are also more likely to be exposed to violence. These women are not able to find well-paying jobs and more often than not the finances of the household are controlled by the men.

⁴⁹ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)’

⁵⁰ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)’

⁵¹ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)’

Disability, gender and poverty are interlinked so women with disabilities are found to be among the poorest sections of society. This makes it extremely difficult for them to access education, employment, health and legal services. This renders them invisible in public spaces and reduces their chances of asserting their rights.

Women in conflict regions, women with disabilities, migrant women, adolescent women, older women and rural women are some other categories of women who have higher risk of being subjected to violence.

Questions/Discussion

1. How do the experiences of Gender based violence vary across class and caste? Discuss with particular reference to India.
2. How does disability intersect with gender in the context of rights of Persons with Disabilities? Give examples.

Conclusion

In this module, we have discussed the topics of gender, disability and violence. An intersectional perspective highlights the complexities of oppression in societies as a multi-dimensional reality. Disability refers to impairments of the body which when they meet the barriers present in the surroundings, make it difficult for the person to function in an optimal manner.

The common point in all three areas is the role of unequal power relations. In gender, it is the imputed superiority of masculine traits over feminine traits. In disability, it is the neglect of the issues and interests of the persons with disabilities by the persons without disabilities. Resources in society such as knowledge, finance, health institutions among others are controlled by the more powerful groups, be they men or non-disabled persons. They decide how much of which resources will be given to which group. This play of unequal power relations leads to discrimination against the less powerful group.

Unequal power relationships between men and women and between people with disabilities and non-disabled people leads to discrimination and makes women with disabilities particularly vulnerable to violence. The concept of intersectionality enables us to look at the full picture instead of having a one-dimensional view.

Activity

Participants are divided into 5 groups based on the 5 categories of the Community Based Rehabilitation Matrix (CBR). It is illustrated in the below diagram:

CBR MATRIX

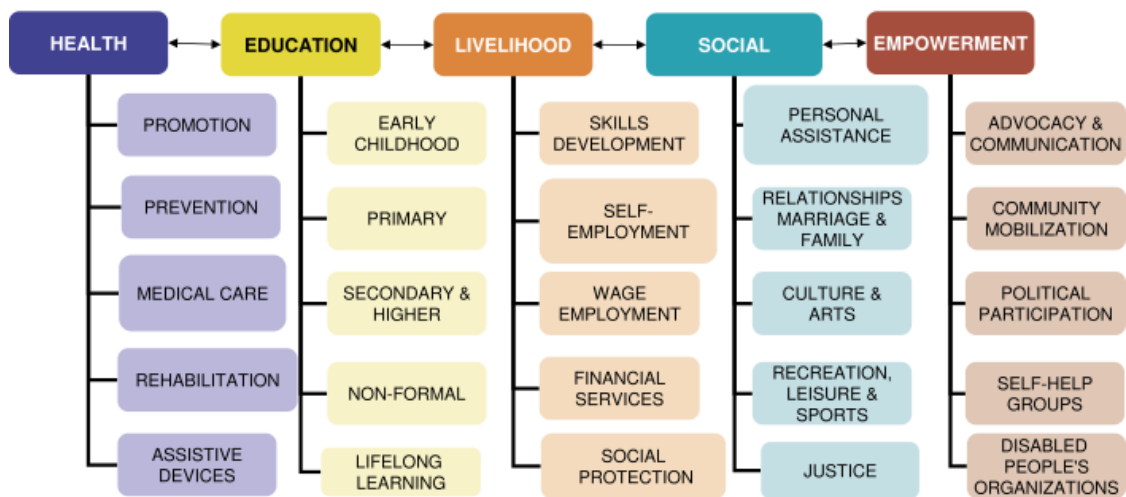


Figure 1: Community Based Rehabilitation Matrix

The members of each group are asked to look at their own life experiences to detail the discrimination that they or a friend of theirs may have dealt with in each of the sub-headings of the categories. A speaker from each of the group may then share the experiences with the other groups.

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Further Reading

On Understanding Gender available on <https://www.genderspectrum.org/quick-links/understanding-gender/>

On Violence Prevention Initiative available on <https://www.gov.nl.ca/VPI/types/>

On Gender-Based Violence available on https://www.unfpa.org/sites/default/files/pub-pdf/Facilitator1s_Guide_English_InDesign_Version.pdf

5. Non-Legal Modes of Redressal⁵²

Sabah Siddiqui

Objectives

This module will help the reader to understand:

- Non-legal modes of responding to violence against Women and Girls with Disabilities;
- Recognize the importance of non-legal modes of responding to violence against Women and Girls with Disabilities;
- Know when the non-legal modes of responding to violence against Women and Girls with Disabilities should be used;
- Elaborate on the kinds of non-legal modes of redressal of violence against women and girls with physical disabilities.

5.1 Introduction

When experiencing violence, the victim/survivor has to take a call on how to respond to it. She may decide to invoke the law, which is often not the first response when the offense does not fall within categories involving serious injuries or death. In reality, for most survivors of violence, the first port of call for help and support is a non-legal measure. Women or girls may call upon family members or friends to discuss the problem, or look for guidance from their community or religious leaders to think about what to do next. They may rely on personal coping mechanisms to deal with difficult situations, or look to organizations and groups that work with issues dealing with the specific problems that are affecting them, such as women's organizations or NGOs. Women and girls with disabilities may seek professional services with counsellors, therapists, and doctors to address trauma, injuries or illness resulting from their experiences of violence.

The word 'non-legal' is here being used to mean outside or beyond the legal rights and duties. Non-legal mechanisms approach the issue by relying on either informal or formal systems that can be accessed in society. Informal mechanisms involve personal coping strategies and social networks of individual survivors. Formal non-legal systems of redressal include services and institutions formed to respond to specific needs of survivors of violence like medical services, psychological and counselling services, helplines and NGOs etc. Thus, non-legal mechanisms of violence redressal do not take recourse to the laws and regulations of the land, but instead depend on other societal structures to create a support network for women and girls with disabilities who have experienced or are experiencing violence.

This issue will be discussed in this module under the following sections. Section 5.2 will provide insights on the importance of non-legal redressal mechanisms. It will be followed by

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information on when to seek non-legal modes of redressal to violence. Section 5.3 will cover different kinds of formal and informal modes of non-legal modes of redressal.

5.2 Why are non-legal mechanisms important?

Non-legal mechanisms of redressal for responding to violence are important resources for survivors of violence. These are not only the first point of contact for the majority of survivors, but are important sources of strength and understanding in what is often a long process in achieving justice. Legal mechanisms of redressal of violence consume time, energy and money. Both the police and the law courts involve intense procedural processes, and the ability to withstand this long but necessary process can tax the physiological, psychological, and emotional resources of the individuals involved. Women and girls with disabilities who survive sexual violence find it extremely difficult to access the justice system. First it is fear that stops them. Second it is the lack of awareness of their rights as citizens. Third, absence of physical infrastructure in law enforcement agencies to access law; and the daunting process of filling out forms and filing the FIR without which no legal process can begin.

While the road to achieving justice is not easy, it is both fruitful and productive. However we should not rely solely on individual strength and determination to see these commendable goals through. We should focus on the possibility of individuals and even groups experiencing burnout.

Burnout is the physiological and psychological state of exhaustion caused by prolonged and unremitting stress and pressure, where the individual may feel too tired and drained of energy to continue with the task at hand, or the cost of persevering with the task comes at a huge personal cost. Consequences of burnout include physical and emotional exhaustion, an increased susceptibility to illness and injury, lowered productivity, and lowered interest or ability in maintaining sociability. The risk of burnout is always present in painstaking legal processes. Non-legal mechanisms of responding to violence are important since the well-being of individuals engaged in seeking legal representation and justice is not always given adequate consideration. Instead, the strategy to achieving justice should include both legal and non-legal mechanisms of responding to violence. While the due process of law will support the complainants in understanding and exercising their legal rights, non-legal systems support and sustain them through the process by responding to their physiological, psychological, and emotional needs.

Sustaining oneself through the process is important for staying focussed on the goal, but also for maintaining a healthy and balanced life during the process of seeking justice. Legal representation significantly contributes to the empowerment of an individual, nonetheless there are many things that contribute to well-being. These include being able to participate fully in social groups of family members, friends, community, women's groups or religious groups, and accessing timely medical and counselling services. The non-legal mechanisms of responding to violence mentioned in this module can contribute to the empowerment of women and girls with disabilities.

Questions/Discussion

How can non-legal modes of redressal contribute to the empowerment of Women and Girls with Disabilities?

5.3 When to seek non-legal mechanisms to address violence?

Violence against women is not limited to rape, sexual abuse or trafficking but as an umbrella term it refers to all aggressive acts committed toward women, whether emotional, sexual, or physical. But among all women who have faced violence in one form and other, women survivors of violence with physical disabilities, are at greater risk of being subjected to violence by a larger number of perpetrators compared to women without disabilities, and are more vulnerable to interpersonal violence (between family members), intimate partners and violence between acquaintances and strangers. Thus, women with disabilities may face discrimination due to their disabilities, besides their gender. Violence against them can be as invisible as neglect and as noticeable as physical abuse or denying them even the traditional roles of marriage and childbearing. These too are forms of violence.

Non-legal modes of responding to violence are relevant at all times in the struggle of survivors to achieve justice, since they are essential and everyday resources and support systems for all survivors of violence. Women and girls with disabilities who have either experienced violence in the past, are currently withstanding violence, or are susceptible to a violent attack in the future would find validation in both formal and informal support systems, in individual and institutional mechanisms of coping and healing.

Questions/Discussion

What are the kinds of violence a woman or girl with physical disabilities may face? Are there some kinds of violence that would be addressed better with a non-legal mode of redressal?

5.4 What kinds of non-legal mechanisms are there to address violence?

As already mentioned there are two main categories of non-legal modes of addressing violence, namely informal and formal. While informal mechanisms rely more on informal and social networks like family and community, formal forms of redressal are more structured as they involve established institutions and organizations like hospital, clinics and NGOs. Below we discuss both these modes of non-legal redressal.

5.4.1 Informal Modes of Redressal

The main informal modes of redressal that will be discussed are –

1. Individual coping mechanisms
2. Personal support systems
3. Faith, religion, and spirituality
4. Self-Help Groups

Individual Coping Skills

Coping skills are strategies to manage stress or trauma so as to be able to handle painful emotions. “Coping refers to cognitive and behavioral efforts to manage (master, reduce, or tolerate) a troubled person-environment relationship” (Folkman & Lazarus, 1985: 152). Coping mechanisms are either active or avoidant. Active coping mechanisms are conscious attempts to reduce stress whereas avoidant coping mechanisms ignore the problem. Coping mechanisms can be differentiated from defence mechanisms. Defence mechanisms are not coping skills, they work at an unconscious level. The use of coping mechanisms is a conscious and purposeful strategy used to manage any external situation like trauma of violence.

Coping styles focus on problems and emotions to reduce stress, and effectively handle feelings of distress that is the outcome of surviving violence or any other problem. There are several kinds of individual coping styles that can be used to deal with stressful situations, such as cognitive strategies, mental strategies like meditation, use of body and movement, development of hobbies to name a few.

Cognitive mechanisms use healthy and calming exercises to bring down stress levels and reinforce positive thinking. These are emotion-focused strategies that help alter one's emotions and negative cognitive patterns to tolerate or eliminate the stress. Talking about difficult situations can help survivors in dealing with their emotional responses. Talking, instead of self-isolating and internalizing the effects of stress, is also a way of coping with a stressful event, and it is best to use talking as a strategy by seeking external support from relatives, friends and other supportive individuals or groups.

Problem-solving cognitive coping strategies are another method of dealing with difficult situations that survivors find themselves in. Problem-solving is also a coping mechanism that identifies the problem that is causing stress and actively trying to solve it. “Problem-focused coping strategies are seen when the individual tries to take a direct approach to solving their problem and reducing their mental discomfort. Planning the steps to get from point A to point B; they are having nightmares, they want to reduce them, what needs to be done to make that happen. In many cases, problem-focused coping is used when the individual has more control over their specific stressors and can directly change their situation” (Marvin, 2017: 14).

Positive coping mechanisms are also sometimes physical in nature, and use body and exercise to deal with stress. Physical activity or any form of exercise serves as a natural and healthy form of stress relief. Yoga, swimming, walking, running, dance, team sports, and many

other types of physical activity can help people cope with stress and the after-effects of traumatic events. Out of these, yoga is an excellent method of responding to the stress and trauma resulting from violent situations. Yoga requires body-mind involvement and can help a person regain their sense of being in control of their lives, as well as increase their self-dependence. Yoga is a non-pharmacological remedy which has been used to help in managing trauma related to violence experienced in situations of war and terrorism, interpersonal violence etc. Yoga, whether as an additional or main intervention, reduces perceived stress, and symptoms of anxiety, depression, and has been associated with improvements in emotion regulation and in feelings of self-efficacy (Telles, Singh, & Balkrishna, 2012). Yoga reduces stress, improves flexibility and concentration, promotes a sense of peace, and can help in dealing with emotional trauma.

Coping mechanisms can also be recreational and relaxing; like engaging in pleasurable hobbies. It is true that engaging in a hobby improves mental health and wellbeing as it reduces stress, low mood, and depression. Relaxing activities are comforting actions like practicing meditation, progressive muscle relaxation, sitting in nature, listening to soft music, knitting, painting, cooking, journal writing, blogging etc.

Personality characteristics and individual experience determine which coping mechanism will be most effective. Whatever strategy is used, what matters is that traumatized survivors of violence find a strategy or combination of strategies that helps them achieve peace of mind and an increasing ability to deal with the challenges of a stressful situation.

Personal Support Networks

When a survivor has opened up to speak their story to a family member, or a close friend or trusted neighbour, it must be recognised that it is so because this is usually thought of as the most personal and close network of trusted supporters. Being respectful of this and really listening to what they are saying is by itself the most reassuring space. Support required may be in myriad areas like the survivor may be seeking medical attention or wants to report the abuse and needs to know how to go about it, or just needs the assurance that the family or trusted friend is the support that is being searched for by the survivor. Maybe the survivor doesn't want to be alone. If the close network or inner circle is able to offer a space of non-judgemental listening, then this personal support network may be enough for the survivor.

Some survivors however find it difficult to turn to family and friends. Luckily, they can find help in other places. Sometimes family and friends just don't understand how to respond supportively. Thus, a personal support system may be different for different survivors of violence. So who else can become part of a healthy personal support network? It might be a cooperative family doctor, an advocate, and members of a violence support group, a religious leader, an understanding teacher, or a social worker. Personal support network comprise of those people who you could call in the middle of the night if you have to.

Sometimes forums help 'victims' become 'survivors' and become a source of support where a survivor seeks emotional support that they lack elsewhere in their lives. Here, as experiences are shared, and options for advice to be sought and given are met, coping strategies

are discussed, and professional resources are shared. The very fact that someone somewhere knows that the survivor exists makes the survivor feel safe and not alone. It becomes a loved personal support network. Sometimes support from an online group validates victims' experiences and empowers them to accept what has happened and in case of ongoing violence they learn to safely confront or leave their abusers. They may feel protected by an anonymous online identity as they confide in sympathizers about the violence and abuse, perhaps for the first time. A shared perspective can develop compassion, friendship and humour which makes this remote network feel like a personal support network. "Majority of individuals disclose to at least one informal support and that victims' disclosure is associated with a number of demographic (e.g., victims' sex, age, race), intrapersonal (e.g., victims' feelings of shame/embarrassment, perception of control over abuse), and situational (e.g., violence frequency and severity, if abuse is witnessed) factors" (Sylaska and Edwards, 2014: 3).

In short, personal support networks are not just limited to family, friends, and neighbours but to any trusted person the survivor feels comfortable with and safe to speak of her experience of violence. The network can extend to counsellors, doctors, and even online forums where the fears and story of the survivor are heard by a non-judgmental audience, and help and support is assured.

Faith, Religion, and Spirituality

India is a country with adherents to many religions, spiritual organisations, and faith-based groups. Faith may be understood as the inner search for purpose or meaning in life where there is a strong unquestioning conviction that "there is something more than just me" (Gopichandran, 2016: 238). On the other hand, spirituality refers to the object of faith (God, nature, the supreme power, art, science, etc.) and all the efforts made to connect with the object of faith. Finally religion is defined as the way of life of a community which shares common beliefs, common spiritual pursuits and a common faith.

The role of religious ideologies and faith-based ideas is still very important in everyday practices of Indians, with many people turning to religion or spirituality to make sense of their lives and the decisions confronting them. To have faith (in a religious or spiritual philosophy) is to look for answers and explanations in sources located outside human intervention; in god, deities, spirits, or religious/spiritual community leaders who intercede with higher powers on behalf of common people. Most Indians routinely turn to religious leaders and faith healers (sometimes called *sant*, *pir*, *mata*, *baba*, *guru*, etc.) for guidance in making small to significant decisions.

Many Indians turn to religious scripture, community leaders and faith healers for not only emotional strength, but also guidance in dealing with problems of the body and the mind. Beside the problems of supernatural origin, faith healers are also known to dispense advice on how to treat physical illnesses and diseases, as well as psychological and emotional disturbances. While the scientific basis for a majority of this advice is disputed and can be investigated, what cannot be questioned is the role of faith contributing to the identity and subjectivity of those who seek spiritual guidance. Faith plays an important role for some people

who find solace and meaning in religious and spiritual ideas, and can be a source of strength for them to get through a period of distress and disquiet. This is certainly not true for all people, some people do not have a strong faith in higher powers, or do not seek their strength from their religious identity, and these people have the right to draw personal strength from other resources. However for many women and girls, turning to religion, faith, or spirituality can be uplifting, and the role of faith should not be discounted in their personal journey. For some people faith can be healing in itself, and to have access to this inner source of strength is protective. “Several explanations have been proposed for the effectiveness of faith healing. These include psychological benefits, a better response to stress, healthier coping mechanisms and the activation of the immune system” (Gopichandran, 2016: 238).

In addition, there are also the advantages that come from belonging to a close-knit religious or spiritual group. Participating in a *satsang*, *majlis*, or prayer group not only strengthens devotion to the religious or spiritual philosophy, but also contributes in the creation of social groups that can become support networks for individual members. Members of the group feel connected because of their shared beliefs, and develop close relations because of participating in common activities. In other words, there is a social component to religious or spiritual participation, and people find strength not only in their personal beliefs, but in sharing those beliefs with like-minded people. Coming together even in prayer can make survivors of violence feel less alone: not only do they feel like they are being looked after by a higher power, but they also may feel that they are part of a social group. They may develop a support system that provides them with not only spiritual guidance, but also practical advice on how to deal with the problems confronting them. Thus participation in activities related to faith, religion and spirituality can be an important non-legal resource for survivors of violence.

Self Help Groups

Self-help Groups (SHGs) are informal groups of people who have come together to address their common problems. The main feature of self-help groups is mutual support. “Self-help groups are voluntary, small group structures for mutual aid and the accomplishment of a special purpose. They are usually formed by peers who have come together for mutual assistance in satisfying a common need, overcoming a common handicap or life-disrupting problem, and bringing about desired social and/or personal change. The initiators and members of such groups perceive that their needs are not, or cannot be, met by or through existing social institutions. Self-help groups emphasize face-to-face social interactions and the assumption of personal responsibility by members” (Katz & Bender, 1976: 278).

The term Self Help Groups (SHGs) became well-known in the context of micro credit programs for income-generating activities. However SHGs are also found as great support systems in the disability sector. They facilitate empowerment, and members begin to develop their awareness and the ability to organise, take action, and bring about change. “SHGs are voluntary associations of 10-20 persons (generally women) who come together to solve their problems based upon mutual help and collective basis. The main reason behind the formation of SHGs is that poor people find it extremely hard to solve their problems individually but once

they form a group it becomes considerably easier to tackle common problems. These groups are known by different names in different places. Some of the terms used in India for these groups are – Sangha, Samooh, Mandal, Sangham, Samiti, depending upon the region” (Kumar, 2006: 2061).

Women’s SHGs empower women with physical disabilities who are survivors of violence by helping make them aware of their basic rights. They are also instrumental in spreading awareness about social issues and legal rights and procedures of law to voice injustices, oppression and fight against violence and abuse. They conduct campaigns and meetings with the families of survivors and communities, and facilitate a change in the ways of thinking. SHGs also work with finance by each member contributing a set amount to the pool which can be used for expenses towards legal mechanism of redressal of violence against women and girls with physical disabilities.

In summary, women’s SHGs generally form as a collective, communal response to a condition of powerlessness. One of the most important aspects of SHG is the group process itself; women are able to make a space for themselves to relate to each other’s story as peers, to establish strong bonds with one another, and develop supportive relationships based on their shared experiences.

Questions/Discussion

When do you think it is appropriate to choose an informal mode of redressal to address violence?

Do you think there is an informal mode you use more than others?

5.4.2. Formal Modes of Redressal

The main formal modes of redressal that will be discussed here are –

1. Helplines
2. NGOs
3. Medical services
4. Psychological and Counselling services

Helplines

A helpline is a telephone service which offers help in the form of listening, or giving information or needed advice to those who call. It is also sometimes referred to as Hotline. However, helplines are not limited to telephone but can also include email, chat and other online services. Telephone counsellors can even direct the person calling for help to other services that might be useful for a particular problem. People call helplines when they may be feeling lonely or unsafe or are suffering mental distress due to violence, bullying or ridicule etc.

Calling a helpline can be useful and reassuring for survivors of violence since they can approach and speak of their situation without having to face a person and yet they get immediate support and advice from a counsellor. There is no need to wait for appointments and no need to travel to get the service and support. It feels safe because calling a helpline can be anonymous in the sense that the caller need not disclose any names. Most helplines are free to use and so accessible to survivors in case they are stranded without any money.

People who work at helplines are trained counsellors with training in talking to people and helping them with a variety of issues. They are trained to listen to problems carefully and to offer possible solutions and give information of services available in different localities, helping the caller to know the closest accessible help they can get. If they feel that the person is in a situation that requires more support than counselling over the helpline, they give references to other services too, like a lawyer contact or a doctor contact etc. the reassurance offered goes a long way to quieten anxieties.

Helplines offer non-judgmental, professional support to people when they need it. Helplines can offer confidential services and impartial support or advice and give vulnerable callers a safe space to discuss problems

Helplines at the frontline of health and social care (Howe, Meakin, & Islam-Barrett, 2018: 4)

In short, a helpline is a faceless remote counsellor and support system that can guide a distressed person to more options of support facilities that may be required. Helplines deliver person-centred and person-led care. They provide a trusted space, and act as the frontline of service delivery, offering the first step to further help, as well as ongoing support. They reach out effectively to vulnerable, isolated individuals and communities.

- For example, in order to help women in distress, Delhi Commission for Women (DCW) started the phone Helpline in March 2000. The phone number was advertised and women in distress were encouraged to seek counselling through telephone between 9.30am to 6.00 pm from Monday to Friday.
- There are helplines in place for women and children in need of help.
 - ❖ 100 is the official toll free police helpline for all genders across the nation
 - ❖ For women specifically, the number is 1091,
 - ❖ For children specifically it is 1092
- For deaf women however these helplines may not be accessible directly, though they may be accessed through an interpreter. Therefore, the Whatsapp accessible/texts friendly number must be saved for the closest police station. It is recommended that deaf women keep these numbers handy on their phone till these helplines become text friendly. However, till then the burden is upon the woman/her friend/guardian to acquire and save a text friendly police phone number by either going to a police station and noting the same, or by contacting an NGO.
 - ❖ Women in Delhi may access the Himmat Delhi Police application through their phone.

- ❖ Deaf women elsewhere must find out their police District Whatsapp group/common user group from a police station. These numbers are displayed outside police stations in paint. Or village Pradhan will have them. As might village watchman, Shanti Suraksha Samitis, etc.

Non-Government Organisations (NGOs)

NGO stands for Non-Government Organisation. It is formed not to earn profit or do business, but with a promise to work towards a charitable cause and to serve specific social purpose. An NGO is usually known for working towards redressing a social problem.

*'There I had Rini Ji, who loved me a lot & supported me. She made me understand & asked as to why I was quiet and why I didn't tell anyone, from so long that I had been in trouble and that everyone should be told about it, no need to be quiet. So now if I face any problem, I tell everyone.'*⁵³

- 41 year old woman with Hearing Impairment, New Delhi, on her experience with connecting with an NGO worker.

NGOs are an important resource as they can raise awareness and influence policies that support humanitarian and legal rights and powers of people in society. This is possible because they observe and check the progress of government and review its actions; and with their advocacy put pressure on the government bodies. They seek to support and improve the circumstances, conditions and situations of people in distress.

Women who are survivors of violence and who are physically challenged can get a lot of support from NGOs that work in related gender and legal domains. The purpose of NGOs is to bring about a positive change, be it social or political, such that the change will effect an improvement in the community and its development by promoting people's participation. NGOs work independently of the government. They facilitate communication from people to government and from government to people. They are involved in research and evaluation of the conditions that need to be redressed. They also undertake advocacy and act as spokespersons. They are constantly interacting with various stakeholders who may be ignored by government inaction, and bring their issue to the notice of the policymakers.

NGOs become important resources for women by providing services such as counselling, mentoring, building awareness of rights, helping in legal aid provision, like filling forms or filing FIRs which the survivors may find difficult to do on their own.

⁵³ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

Medical services

Medical services are health services that treat any physical condition like pain and injury, illness, or disease. To be able to give medical service the medical institution, agency or individual must have a valid license and must be certified to practice medicine and health care. Different kinds of medical facilities can be found community health centers, public health centers, outpatient department (OPDs) in hospitals, mental hospitals, and rehabilitation facilities. Blood banks, pathological labs, diagnostic centers, and doctor's clinic or dispensaries also come under the umbrella of medical services.

When a survivor of violence faces or experiences difficulty in breathing or suffers shortness of breath, feels pain or tingling in the chest or abdomen, experiences dizziness and confusion, begins vomiting, begins to bleed or feels sharp pain, the individual should ask to be taken to emergency medical aid. Some immediate effects of violence are physical injuries that will need first aid from a general doctor. A torn lip, punctured eye, cut ear, bruised cheek or any other type of body damage due to violence will need emergency treatment. Many women have been subjected to acid attacks, or even being injected with things that could affect the person's physical wellbeing. The survivor will need pathological diagnosis based on which further treatment can be determined.

If it is not an emergency, the individual may need services of a general medical practitioner who is the first person who will treat all common medical conditions, and who then may refer patients to specialist doctors. A general physician may refer the victim to an orthopaedist, gynaecologist or another specialist considering the physical need of care. If the survivor shows signs of mental distress, then the general physician may refer the victim to a psychiatrist. A psychiatrist can treat mental, emotional, and behavioural disorders. A psychiatrist may ask for diagnostic tests first before prescribing medications. A psychiatrist may need to consult with psychologists and psychiatric social workers to provide the individual with a more holistic treatment.

Sometimes the survivor may need the help of a physiotherapist, who is not a medical doctor but who has studied and has knowledge of the musculoskeletal system, and improves the quality of life by easing discomfort in body movements. Physiotherapists are trained to treat conditions such as sprains, back pain, arthritis, strains, incontinence, bursitis, posture problems, sport and workplace injuries, reduced mobility, amongst others. Rehabilitation following surgery is also included within this category.

Described above is treatment within Allopathy or Western medicine. Survivors can also choose to seek alternative medical therapies of Traditional or Complementary Medicine (TCM). Some better known examples of TCM are Ayurveda, Homoeopathy, Accupuncture or Accupressure treatments. In India, a separate ministry was constituted in 2014 for the development of education and research in Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH). Ayurvedic medicine is a holistic healing system that works towards restoring the natural balance between the mind, body, and spirit. While its main goal is to promote good health, rather than fight disease, Ayurvedic treatments can also be used to treat specific health

problems. Some people prefer the holistic and gentler approach that TCM have in comparison to Allopathy.

Whichever type of medical services are availed by victims and survivors of violence, attending promptly and regularly to health conditions is an important and unavoidable response to violence. Often physical injuries and illnesses must be treated first before seeking other methods of responding to violence. This not only ensures the health and safety of women and girls who have or are experiencing violent incidents, but also sustains them through the period of recovery and obtaining justice. Thus, medical services are one of the most significant non-legal methods of responding to violence.

Psychological and Counselling services

Psychological and Counselling services are designed to support psychological and emotional well-being. These services are administered by clinical or counselling psychologists, usually in collaboration with psychiatrists and mental health social workers. A psychologist has an MPhil or a doctoral degree (PhD or PsyD) in psychology, which is the study of the mind and behaviour. A psychological counsellor is a mental health professional who has at least a master's degree (MA or MSc) in psychology, counselling, or a related field.

Violence is a very traumatizing experience that can include physical and sexual abuse, as well as more invisible forms like neglect and bullying or more visible forms of violence like communal violence terrorism, and war. With violence, it is easy to focus on the physical effects. However, the scars associated with experiencing violence can be invisible with longer lasting effects than physical scars on the body.

While the injuries on the body can be life-changing and can even result in death, it is also important to consider the impact the incident can have on a victim's mental health. Depression, anxiety and low self-esteem are typical repercussions of a violent experience. The psychological effects may completely change the personality of the victim. Some victims also report suicidal ideas. Women and girls with physical disabilities who have survived violence, experience a higher than average level of anxiety, depression, panic attacks and post-traumatic stress disorder (PTSD). Hence it is important to extend psychological support to the victim. Survivors of violence can seek emotional and psychological support through the process of counselling. Mental distress affects one's ability to

PTSD is a condition when survivor has repeated recollections of trauma related memories. These memories can be intrusive in nature; thus even if the individual does not want to recall the event, the memories keep coming. They are commonly known as 'flashbacks.' Apart from 'flashbacks' various symptoms seen in anxiety disorders such as apprehension, feeling numb, increased palpitations etc. are also seen. It is typical for people having this problem to avoid those activities and situations that serve as reminders of the trauma.

Training Manual for Psychologists for Mental Health Service Delivery under National Mental Health Programme (Sinha, et al., 2016: 12)

function normally in the workplace and develop healthy relationships in the family, peer group and workplace. This is why the role of the counsellor or psychotherapist in the healing of survivors of violence is considered very important.

Counselling and Psychotherapy entail the provision of professional assistance and guidance in resolving mental distress which may involve components of emotional, cognitive and behavioural disorders. In counselling or psychotherapy, a relationship is fostered between the survivor and counsellor, in which the counsellor listens without making judgements while assuring the survivor of keeping everything discussed in the session private and confidential. Counsellors and psychotherapists are not supposed to give advice, but they may ask questions, or challenge the survivors in ways that bring to the surface the assumptions taken for granted. Psychotherapy tends to be more intensive than counselling, and may continue for a longer period of time as subjects are explored in more detail. The aim of counselling and psychotherapy is to help the survivor come to terms with what has happened. However, counselling and psychotherapy are not for everyone; the survivor has the choice to decide whether it is needed, and whether it is the right time for it.

Survivors need to be listened to with respect and in a non-judgmental way when they choose to talk about their experiences. Counselling provides survivors with a safe place to voice their feelings without the fear of being judged for it. It also helps the survivor to confirm what their emotional state is and to let them know they are not alone with their feelings. Furthermore, counselling minimizes the negative beliefs held by the survivor. A counsellor may use feminist counselling methods for better effects on survivor. Feminist counselling comes from a social justice perspective, and attends to the social identities of the client in counselling, in particular their gender identity (Enns, 2012).

Counselling should be provided to the victim, her family members and supporters as well as to the accused persons. In many cases, due to fear, the victim does not reveal the incident in detail. If a victim is counselled before recording the case, then she will be mentally and emotionally strong enough to narrate the incident more firmly and boldly. Hence it is necessary to understand the scenario of victims before recording her case.

There are many kinds of counselling services, but we can broadly differentiate between talk-based therapy, art-based therapy, and body-based therapy⁵⁴.

Talk-based therapies involve the client sharing negative feelings and traumatic past events with a therapist/counsellor. Therapists/counsellors are trained in listening to very personal experiences and supporting the client to reflect on their own experience. Talk-based therapies give people the chance to explore their thoughts and feelings, as well as the effects these have on their behaviour and mood. Talk-based therapies can take many forms; Cognitive Behavioural Therapy (CBT), Rational Emotive Behavioural Therapy (REBT), Psychodynamic psychotherapy, Person-centred counselling (Humanistic therapies) are some of the best studied ones.

⁵⁴ For brief descriptions on the different approaches and schools of psychotherapy, go to <https://www.psychotherapy.org.uk/about-psychotherapy/types/>

The Rehabilitation Council of India (RCI) set up in 1986 provides registration and licensing to clinical psychologists as well as rehabilitation counsellors. Services of therapists/counsellors can be availed in government or private hospitals, as well as private clinics run independently by groups or individuals.

Art Based Therapy (ABT) uses creative mediums like drawing, painting, colouring, and sculpture to process traumatic events through art when words cannot express the depth of the trauma or remove memories of violence. In addition, ABT can deploy theatre, play, music or other art forms. Administered by a professional therapist who is trained to help survivors examine feelings and thoughts about trauma through the production of art materials, usually followed by a discussion, ABT may seek to produce the story of trauma with a graphic timeline. The World Centre for Creative Learning (WCCL) Foundation, operating from Pune, has trained many ABT practitioners around the country since 2001.

Body based therapy use the body and its movements to release trauma and calm the person. Trauma can stay inside the mind and body long after the threat of harm has passed. It can reside in the flesh, and bones, and in the mind. Sometimes it remains even after talk therapy and other therapies have been availed to get over the trauma of violence. Body based therapies focus on dealing with trauma that the survivor is unable to reach through talk. Some of the body based therapies are Dance movement therapy (DMT) and Somatic Experiencing (SE). The Creative Movement Therapy Association of India (CMTAI) has been providing training in DMT in Delhi and Bangalore since 2014.

To conclude, Psychological and Counselling services are useful resources available to women and girls with physical disabilities who are survivors of violence. Since violence can affect the survivor not just physically, but more often also causes psychological problems, women and girls who have survived violence need emotional support and counselling. Thus psychological and counselling services become an important non-legal resource in responding to violence against women and girls with disabilities in India.

In this, cognitive therapists can help survivors build a “coping repertoire” of strategies that they can rely on when they are anxious or panicking.

Questions/Discussion

What distinguishes formal modes of redressal from the informal modes?

When would it be appropriate to choose formal modes of redressal to address violence?

Conclusion

To conclude, we have seen that non-legal mechanisms address violence using formal as well as informal systems to aid women and girls (with physical disabilities and who are survivors of violence) to deal with the impact of violence, and restore body and mind to a better level of health so that they can be in a position to sustain the legal battles against the perpetrator of violence. Formal systems respond to specific needs of survivors of violence, while informal

mechanisms depend on societal structures to create a support structure for women and girls with disabilities who have or are experiencing violence

Non legal mechanisms are important as they are the first point of contact for survivors of violence, and are important sources of strength and general well-being. It is best to seek all mechanisms to address violence immediately after the attack. Helplines and medical services must be first sought out. It is not that only if there is an emergency that non legal mechanisms should be availed but seeking help from all sources will keep the survivor strong and courageous, and mentally and physically fit. Counselling services, support groups, helplines, coping mechanisms etc. help the survivors feel empowered and courageous to face the world and take the stride towards asking for justice. The impact of violence can fester and create physical as well as psychological problems. When physical pain or disease begins to show in the body, medical services will be the first approach. However, when the mind starts to develop fear, anxiety, depression, silence, or withdrawal, psychological counselling in its many forms can be accessed by the survivor. The survivor may benefit by taking membership in a self-help group or faith-based group, and talking to trusted and reliable contacts in their personal support networks or a relevant NGO, as these may guide and strengthen survivors in their personal journey towards health and healing, as well as help seek legal representation and social justice.

Activity

Exercise 1

'I did computer and printing programme assistant from ITI. People there were not giving me admission. They told me that you get a certificate from VRC (Vocational Rehabilitation Centres), if they say a yes then we will give you admission. I went to VRC, there also I had a fight. They started telling me that you won't be able to operate the computer, so we will first take your test. I said alright. Now they had to take a computer test and they were taking the test on a typewriter. I told them there is a lot of difference between a typewriter and a computer. It is difficult to work on a typewriter. They said if this is difficult, then you can search another course. Then I went to their director and fought with him. The director then called them and I got admission into the institute.'⁵⁵

- 41 year old woman with Loco-motor Impairment, New Delhi

Based on this real life incident, identify the barriers this woman faced in accessing educational opportunities. Were these barriers a form of violence? What were the steps she took to get justice?

⁵⁵ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

Exercise 2

*'I have something to share. My husband used to shout at me and hit me. I straight away always used to go to the balcony. I had this in mind that if he wanted to shout he should shout outside. Why should he be a boss in the home? I am also shouting outside, he should also come outside, what is the problem? All the vegetable hawkers used to come and tell me that your husband is a God because he has married a blind girl. I used to tell them that you can keep him if you want. I think outside is safe for a woman. I think that if she is getting beaten up at home, she should run to the balcony where no one will come and hit her. The person who is hitting, he will also come into his senses because he will see that public is looking. At home that was what I used to do, that was the only safeguard I had.'*⁵⁶

-52 year old woman with Visual Impairment, New Delhi

In this real life example, what were the strategies being used by this domestic violence survivor? What other non-legal methods could she have used?

Exercise 3

*'My husband doesn't help me at all. I support myself financially also. He says that manage on your own since you have a job, don't depend on me. I told my mother-in law also that he doesn't help financially. She said she will talk to him. After that he gives some money like 100 or 500 otherwise he does not. We don't go for outings also, he always says he has a lot of work. We go only when I force him.'*⁵⁷

-28 years old woman with Partial Hearing Impairment, New Delhi

In this example can you identify the violence this woman could have been facing? What was the first non-legal recourse she made use of? Could she have turned to any other mechanism for support?

Exercise 4

If something wrong happens with us and we tell our parents, they will be scared and will stop our studies and will not send us back to study. That is why we would prefer to share such a thing with our best and close friends and find out solution for that. If we tell our parents or brother, they will ask us to come back home and will stop our studies. If we will not study then what will be our future?... It's not that they have any wrong intention

⁵⁶ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

⁵⁷ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

*but they get scared for me. They will think that I am disabled and if something happened with me once it can happen again as well.*⁵⁸,

- 21 years old girl student with Visual Impairment, Ahmedabad

What are the deterrents that keep this woman from reporting violence or taking help from family? What are the personal support networks that she woman finds most supportive and why?

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6. Gender Specific Laws on Violence in India⁵⁹

Shalu Nigam

Objectives

This module will help the reader to understand:

- Major provisions of the Convention on Elimination of Discrimination Against Women (CEDAW);
- The constitutional provisions that facilitate women's rights in India;
- Relationship between Women's Movement and legal discourse in India;
- Major provisions on National Policy on Empowerment of Women;
- Structure and mandate of National Commission of Women;
- Major women-specific laws in India on Sexual Harassment at Workplace, Domestic Violence, Child Sexual Abuse etc.;
- The interpretation of women's rights by courts.

6.1 Introduction

This module will discuss the international provision relating to Convention on Elimination of Discrimination Against Women (CEDAW)⁶⁰ as well as national developments relating to women's rights and legal discourse. It focuses on the legal rights available to a woman (including women with disabilities) in the national and international arena. At international level, besides Universal Declaration of Human Rights and other instruments, CEDAW is an international human right treaty adopted by the UN General Assembly in the year 1979 which requires countries to eliminate discrimination against women in all areas and promote equal rights of men and women. India has ratified this treaty in July 1993.

The Constitution of India not only grants but also empowers the State to adopt measures for affirmative action in favor of women. Principles of gender equality are enshrined in the Preamble of the Constitution, the Fundamental Rights, and the Directive Principles. The Constitution guarantees right to equality on the basis of sex under Article 14 and 15. According to the 73rd Amendment, passed in 1992, the Constitution guarantees 1/3rd seats under Panchayati Raj institutions will be reserved for women.

The first committee constituted by the government on the Status of Women in India⁶¹ in its report in 1974-75 noted that the majority of women could not enjoy their constitutional rights. For instance, the Constitution guarantees equality on the basis of sex under Article 14, where women have been denied equal status within private and public spaces. Women are

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⁶⁰ Available at <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>

⁶¹ Committee on Status of Women in India (1974) Towards Equality, Government of India

being discriminated in their homes, in places of work and in political spaces. Many women are denied education and employment opportunities. The Report pointed out shortcomings that affect the status of women such as neglect of health and education of girls and women and increasing incidence of violence against women.

The women's movement in India has struggled hard over the years to ensure that women as citizens secure their entitlements. The National Commission for Women⁶² was established in 1992 with the purpose of advising the government about the issues affecting women. The 73rd and 74th Amendments to the Constitution of India in 1992 and 1993, respectively have provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels. The National Policy for Empowerment of Women was formulated in 2001. Several laws have been amended and new laws enacted due to consistent efforts being made by the women's movement. Some of these laws are Protection of Women against Domestic Violence Act, 2005 Sexual Harassment of Women and at Work Place Act, 2013, Protection of Children against Sexual Offences Act, 2012, and Criminal Law Amendment Act, 2013.

6.2 International Instruments Available for Promotion of Women's Rights

The Charter of United Nations⁶³ adapted in the year 1945 in its Preamble reaffirms faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women. The Universal Declaration of Human Rights⁶⁴ adapted in 1948 proclaimed equal entitlements for men and women without any distinction. It has been the catalyst for improving human rights protections for groups such as disabled people, indigenous communities and women.

In 1967, United Nations Member States adopted the Declaration on the Elimination of Discrimination against Women⁶⁵, which states that discrimination against women is an offence against human dignity and calls on States to "abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women⁶⁶".

The Convention on the Elimination of All Forms of Discrimination against Women⁶⁷ was adopted by the General Assembly in 1979. The Convention articulates the nature and meaning of sex-based discrimination, and lays out State obligations to eliminate discrimination and achieve substantive equality.

⁶² National Commission for Women Act 1990 No. 20 of 1990

⁶³ United Nations (1945) Charter of United Nations October 24, 1 UNTS XVI

⁶⁴ UN General Assembly (1948) Universal Declaration of Human Rights Adopted on December 10, 217 A III

⁶⁵ UN General Assembly ((1967) Declaration on Elimination Against Women adopted on 7th November 1967 A/RES/2263 (XXII)

⁶⁶ UN General Assembly resolution 34/180, Convention on the Elimination of All Forms of Discrimination against Women (3 September 1981), United Nation Treaty Series Vol 1249 p. 13 Available at <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>

⁶⁷ UN General Assembly (1979) Convention on the Elimination of All Forms of Discrimination against Women (3 September 1981), United Nation Treaty Series Vol 1249 p. 13

In 1993, at the Conference held in Vienna, emphasis was laid on the maxim, “Women’s Rights are Human Rights”.

Adopted during the Fourth World Conference on Women in September 1995, the Beijing Declaration and Platform for Action focused on 12 areas concerning the implementation of women’s human rights and set out an agenda for women’s empowerment. These 12 critical points include strategies to promote women’s health, eliminate violence against women, eradicate poverty and illiteracy, promote peace, facilitate women’s access to resources and their full participation in decision making and sharing of power, and eliminate all forms of exploitation of girl child. While focusing on women with disability, it specifically states that “Strengthen and encourage the implementation of the recommendations contained in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, paying special attention to ensure non-discrimination and equal enjoyment of all human rights and fundamental freedoms by women and girls with disabilities, including their access to information and services in the field of violence against women, as well as their active participation in and economic contribution to all aspects of society.”⁶⁸

In 2000, the international community held a Millennium Summit and agreed to eight time-bound Millennium Development Goals (MDGs)⁶⁹ to be achieved by 2015, including a goal on gender equality and the empowerment of women, as well as one on the reduction of maternal mortality besides, eradicating hunger, eliminating poverty reducing child mortality, improving maternal health, eradicating diseases as Malaria, HIV and AIDS, achieving universal primary education, environment sustainability and global partnership for development.

However, not all goals could be achieved by 2015 therefore when MDGs expired in 2015, a new set of goals have been adopted by the United Nation General Assembly in 2015. These 17 Global Goals also known as Sustainable Development Goals⁷⁰ or SDGs include achieving gender equality and social justice besides eradicating hunger, poverty reducing inequalities and creating better environment especially for children, elderly, persons with disabilities, refugees, indigenous people, migrants and internally displaced persons.

Disability is referenced in various SDGs (4, 8, 10, 11 and 17) and specifically in parts related to education, growth and employment, inequality, accessibility of human settlements, as well as data collection and monitoring of the SDGs.

Questions/Discussion

What has been the role of the United Nations in promoting Gender Equality and Equity?
What can State Parties do to strengthen the agenda as proposed by the United Nations in promoting Gender Equality and Equity?

⁶⁸ Beijing Declaration and Platform for Action, Fourth World Conference on Women, Para. 232(p), A/CONF/177/20 (Sept. 15, 1995) available at <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm..>

⁶⁹ UN General Assembly (2000) United Nations Millennium Declaration, Resolution Adopted by General Assembly A/RES/55/2 adopted on 18th September 2002

⁷⁰ UN General Assembly (2015) Transforming Our World: the 2030 Agenda for Sustainable Development, A/RES/70/1

6.3 The Convention on the Elimination of all Forms of Discrimination against Women

CEDAW⁷¹ also described as the International Bill of Rights of Women, focuses on women's rights as human rights and argues for ending all forms of discrimination against women in both public and private spheres, and requires countries to promote equal rights for both men and women. The Convention was adopted by the United Nations on 18 December, 1979 and came into force as a treaty on December 3, 1981. As of 2016, 189 countries across the world have ratified CEDAW. It is a key to advancing women's rights and gender equality across the world and makes certain basic statements such as:

1. Women are inherently equal to men;
2. A nation's law should reflect equality;
3. Sex based discrimination should be abolished;
4. Gender inequalities should be addressed at all levels and in all spheres including families, communities, market and state.

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- To establish tribunals and other public institutions to ensure the effective protection of women against discrimination;
- To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

6.3.1 What are the main provisions of CEDAW?

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life -- including the right to vote and to stand for election -- as well as education, health and employment.

States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.

The Convention is structured in six parts with a total of 30 articles -

- **Part I** (Articles 1-6) focuses on non-discrimination, sex stereotypes, and sex trafficking.

⁷¹ UN General Assembly resolution 34/180, Convention on the Elimination of All Forms of Discrimination against Women (3 September 1981), United Nation Treaty Series Vol 1249 p. 13 Available at <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>

- **Part II** (Articles 7-9) outlines women's rights in the public sphere with an emphasis on political life, representation, and rights to nationality.
- **Part III** (Articles 10-14) describes the economic and social rights of women, particularly focusing on education, employment, and health. Part III also includes special protections for rural women and the problems they face.
- **Part IV** (Article 15 and 16) outlines women's right to equality in marriage and family life along with the right to equality before the law.
- **Part V** (Articles 17-22) establishes the Committee on the Elimination of Discrimination against Women as well as the states parties' reporting procedure.
- **Part VI** (Articles 23-30) describes the effects of the Convention on other treaties, the commitment of the state parties and the administration of the Convention.

6.4 Constitutional Provisions at the National Level to Facilitate Equality between Men and Women

At national level, the principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women.

Constitutional Provisions that support women's rights are

- (i) Equality before law enshrined in Article 14;
- (ii) The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i));
- (iii) The State to make special provisions in favor of women and children (Article 15 (3))⁷²;
- (iv) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16) ;
- (v) The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); equal pay for equal work for both men and women (Article 39(d));
- (vi) To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A) ;

⁷² For instance, the state has made specific laws such as Sexual Harassment at Workplace Act, Maternity Benefit Act, The Prohibition of Child Marriage Act, the Dowry Prohibition Act, Domestic Violence Act, and various other laws, to protect and promote rights of women and children.

- (vii) The State shall 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 (Article 41);
- (viii) The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42);
- (ix) The State to promote with special care the educational and economic interests of the Schedule Castes, Schedule Tribes and other weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46);
- (x) The State to raise the level of nutrition and the standard of living of its people (Article 47);
- (xi) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory⁷³ to the dignity of women (Article 51(A) (e));
- (xii) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3));
- (xiii) Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4)) ;
- (xiv) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3)) ;
- (xv) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4));
- (xvi)** 73rd and 74th Constitutional amendments were passed in the year 1992 and emphasizes the idea of local self-governance in rural and urban India through local Panchayats and Municipalities. The amendments prescribed regular, timely and fair elections and most importantly call for one-third seats to be reserved for women in these local bodies along with reservation of seats for Scheduled Caste and Scheduled Tribe population. These amendments also provide that the one-third of elected members and one-third of Sarpanch or chairperson should be women. In total, almost one million seats were reserved for women through these provisions. Women form 46 percent of total 13.41 lakhs elected representatives in Panchayati Raj Institutions⁷⁴. Out of total 29,17,336

⁷³ For instance, in the recent Sabrimala Temple entry case, the petitioners stated that denying entry of women in age group of 15 to 50 years into the temple is not only a discriminatory practice but also it is derogatory to women. Similarly, poor women cannot be detained unreasonably or arbitrarily as held by the court in Puspalata Choraria v State of Assam Crim Misc 144 of 1986

⁷⁴ Lok Sabha Unstarred Question No. 3213 answered by the Minister of State for Panchayati Raj Shri Nihal Chand on 17.12.2015

Elected Representatives across 28 States and Union Territories 13,41,773 are women. Five states, namely, Jharkhand, Rajasthan, Uttarakhand, Chhattisgarh and Karnataka reported more than 50 percent representation of women.

Questions/Discussion

Discuss the role of CEDAW in promoting Legal Empowerment of Women with Disabilities?

Discuss the role of constitutional provisions in guaranteeing equality to women?

Why is CEDAW important?

How is CEDAW monitored?

The Constitution of India guarantees equality and social justice. Discuss.

The voice of women, minorities, Schedule castes, Schedule Tribes, Minorities, and other marginalized sections is important to preserve the tenets of democracy. Discuss

6.5 National Policy on Empowerment of Women

The Report of the Committee on Status of Women⁷⁵ or 'Towards Equality' as mentioned above, Shram Shakti Report⁷⁶ 1988, National Perspective Plan for Women 1988-2000⁷⁷ and several other reports highlighted gender disparities such as those evident through the skewed sex ratio⁷⁸, increasing incidences of violence against women in homes as well as in public spaces, and discrimination against girl child and women. The underlying cause for gender inequality is uneven social and economic structures which consider women as secondary citizens. This has also made tremendous impact on women belonging to weaker sections of society such as those belonging to Schedule caste, Schedule tribes, Other Backward Classes, minorities and women with disabilities. Majority of women in rural areas and in informal and unorganized sectors are marginalized and excluded from the process of development. Keeping all these factors in mind, the National Policy on Empowerment of Women⁷⁹ marked a shift in the approach to women's issues from welfare to development. In recent years, the empowerment of women has been recognized as the central issue in determining the status of women.

What are the major provisions of National Policy on Empowerment of Women?

⁷⁵ Committee on Status of Women in India (1974) Towards Equality, Government of India

⁷⁶ Shram Shakti Report (1988) Shramshakti: Report of National Commission of Self Employed Women and Women in the Informal Sector, The Government of India, New Delhi

⁷⁷ National Perspective Plan for Women (1988) National Perspective Plan for Women 1988 2000 AD: Report of the Core Group Set Up by Department of Women and Child Development. Ministry of Human Resource Development Government of India

⁷⁸ Sex ratio implies number of females per thousand males. As per the Census 2011 there are 929 females per thousand males.

⁷⁹ The document for the National Policy for the Empowerment of Women can be found at <http://www.wcd.nic.in/sites/default/files/National%20Policy%20for%20Empowerment%20of%20Women%202001.pdf>

The National Policy on Empowerment of Women adopted in 2001 states that "All forms of violence against women, physical and mental, whether at domestic or societal levels, including those arising from customs, traditions or accepted practices shall be dealt with effectively with a view to eliminate its incidence. Institutions and mechanisms/schemes for assistance will be created and strengthened for prevention of such violence, including sexual harassment at work place and customs like dowry; for the rehabilitation of the victims of violence and for taking effective action against the perpetrators of such violence. A special emphasis will also be laid on programmes and measures to deal with trafficking in women and girls." The objective is to bring about the advancement, development and empowerment of women and to eliminate all forms of discrimination against women. It was directed towards achieving inclusive growth with special focus on women.

Specifically, the Objectives of this Policy include

- (i) Creating an environment through positive economic and social policies for full development of women to enable them to realize their full potential
- (ii) The de-jure and de-facto enjoyment of all human rights and fundamental freedom by women on equal basis with men in all spheres – political, economic, social, cultural and civil
- (iii) Equal access to participation and decision making of women in social, political and economic life of the nation
- (iv) Equal access to health care, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office etc.
- (v) Strengthening legal systems aimed at elimination of all forms of discrimination against women
- (vi) Changing societal attitudes and community practices by active participation and involvement of both men and women
- (vii) Mainstreaming a gender perspective in the development process
- (viii) Elimination of discrimination and all forms of violence against women and the girl child; and
- (ix) Building and strengthening partnerships with civil society, particularly women's organizations.

Under the Operational Strategies, the Policy provides:

- a) Strict enforcement of relevant legal provisions and speedy redressal of grievances with special focus on violence and gender related atrocities;
- b) Measures to prevent and punish sexual harassment at work place and protection of women workers in the organized/unorganized sector;
- c) Crime against women - their incidence, prevention, investigation, detection and prosecution to be reviewed regularly at all Crime Review fora at the Central, State and District levels.

- d) Women's Cells in Police Stations, Women Police Stations, Family Courts, Mahila Courts, Family Counseling Centres, Legal Aid and Nyaya Panchayats to be strengthened and expanded to eliminate violence against women

The Policy also provides that "Women's Cells in Police Stations, Women Police Stations, Family Courts, Mahila Courts, Counseling Centers, Legal Aid Centers and Nyaya Panchayats will be strengthened and expanded to eliminate violence and atrocities against women."

The National Policy for Persons with Disabilities 2006 endorsed the needs of women with disabilities as a doubly disadvantaged group and created a separate section which aimed at providing special programmes for education, vocational training, employment and rehabilitation of women with disabilities. It ensures that women and girls with disabilities are 25 percent beneficiaries in the rehabilitation projects. The policy seeks establishment of short stay homes and hostels for working women with disabilities. The Twelfth Five Year Plan envisaged the problems and needs of most vulnerable groups and emphasized on training of school teachers and anganwadi workers besides providing for vocational training and assured employment for differently abled women

Questions/Discussion

What relevance does the National Policy for Empowerment of Women have for Women with Disabilities?

How the policy on women's empowerment enables to sustain the goals of gender equality and equity?

Why do we need special programmes and policies for women, disabled groups or other marginalized sections of community?

When there are laws and policies that facilitate women's empowerment, why people are still being discriminated at the ground level?

Why the policies are not implemented properly?

6.6 Women's Movement Engagement with the Law

The women's movement in India started in its nascent stage during colonial times when laws were made to abolish Sati, prevent child marriage, and to legalize marriages of Hindu widows.

In 1971, the Government of India appointed a Committee on Status of Women in India to study status of women in free India. Some of the members of this Committee were: Phulrenu Guha, Vina Mazumdar, Lotika Sarkar, Leela Dube, Maniben Kara, Urmila Haksar, Neera Dogra, Savitri Shyam, Sakina Hasan and Vikram Mahajan among others. The Committee presented its report titled 'Towards Equality' in 1974-75 which highlighted existence of discriminatory socio-cultural practices and biased socio-economic processes that exclude women from the process of development and denial of rights to women. The findings of the report reopened the women's question for government, academia and women's organizations.

Furthermore, several incidents relating to atrocities against women during the decades of 1970s and '80s led to legal reforms upholding the rights of women. For example, in Mathura Rape Case, a young tribal woman was raped inside the Desaijanj police station in Maharashtra by two constables on 6th March 1972. But when the case reached the Supreme Court in 1979, the two culprits were acquitted. An open letter was written by Professors Upendra Baxi, Raghunath Kelkar, Lotika Sarkar and Vasudha Dhagamwar to the Supreme Court protesting the manner in which the concept of consent was interpreted. After widespread protest and outrage, the government was forced to amend the then existing rape law, and the Criminal Amendment Act 1983 was introduced which made custodial rape punishable. More importantly, the burden of proof shifted from the abused to the abuser. Provisions were also added for in-camera trial, prohibition to disclose identity of the victim and more stringent punishments.

Also, during the same period, a large number of newly married brides died due to 'stove burst' and police was recording these incidents as suicides despite clear evidence that these women were murdered by their husbands and in-laws as the parents of brides could not fulfill dowry demands. For instance, on 15th May 1978, Tarvinder Kaur was burned alive because her husband and in-laws were demanding dowry which she could not fulfill. Similarly, Kanchan Chopra, a steno working in Delhi was brutally murdered because her husband and in-laws were demanding money which her parents could not afford. It is said that in the year 1978 almost 200 cases were reported in Delhi where the newly married brides were burnt or murdered.

Thereafter, widespread protests and demonstrations were held by various women's organizations against the rising incidences of dowry deaths. The government was then compelled to amend the law and stricter punishment was imposed in situations where women die within seven years of her marriage. Section 304 B was added to the Indian Penal Code which says that if the death of a woman is caused by burns or bodily injury or occurs in suspicious circumstances within 7 years of her marriage, and there's evidence to show that before her death, she was subjected to cruelty or harassment by her husband or his relatives for dowry, then the husband or the relatives shall be deemed to have caused her death. Further, section 113B of the Evidence Act, 1872 ("Evidence Act"), creates an additional presumption of dowry death when it is shown that before her death, the woman had been subjected to cruelty on account of dowry demand. Further, Section 498A IPC⁸⁰ was specifically included in 1983 to protect women from cruelty and harassment by the husband and in-laws according to which the husband or relative may be imprisoned to up to 3 years and such arrest is non-bailable.

However, experiences reveal that either there are lacunae in the laws or the laws have not been implemented properly. Many a times, women have to run around in the courts and police stations. Police do not register the cases easily, or do not conduct investigations properly. In many cases evidence is destroyed because of delay or lack of knowledge among common people about the laws and procedures to be followed. Or, sometimes, witnesses do not come forward and therefore the case gets weakened, trials go on and on because judges are transferred, and getting justice becomes difficult.

⁸⁰ Section 498A states that if a married woman faces cruelty at the hands of her husband and in-laws she can file a complaint under this law. It penalizes the accused persons with maximum three years imprisonment and/or fine.

So, the women's movement has kept on pushing for proper implementation of existing laws, and enactment of new laws such as Domestic Violence Act in 2005 and the Sexual Harassment of Women at the Workplace Act in 2013. Also, statutory bodies such as National Commission for Women and State Commissions for Women have been constituted at the National and State levels to advise the government on the formulation and implementation of policies affecting the situation of women.

Questions/Discussion

If the international instruments and constitutional provisions facilitate women's rights, then why has there been a need for the women's movement to engage with the law and demand legal reforms?

How do you evaluate the Indian Women's Movement engagement with the law?

Indian women's movement place heavy reliance on law to deal with the concerns of women. Do you agree or disagree? Please give reasons.

6.7 National Commission for Women

National Commission for Women is a statutory body established in 1992 under the provisions of the National Commission for Women Act, 1990. The purpose of the commission is to advise the government on all policy matters affecting women.

The objective of the NCW⁸¹ is to represent the rights of women in India and to provide a voice for their issues and concerns. The subjects of their campaigns have included protest against dowry, equal representation for women in jobs, and measures to counter exploitation of women in the labor force etc. They have also discussed police abuses against women. The mandate of this body includes:

- To review the Constitutional and Legal safeguards for women;
- Recommend remedial legislative measures;
- Facilitate redressal of grievances;
- Advise the Government on all policy matters affecting women.

What is the composition of the Commission?

The NCW is made up of a chairperson, five members and a member secretary. A person 'committed to the cause of women' is nominated and appointed as Chairperson by the Central Government. The five members are also nominated by the central Government. One member must be from SC / ST community.

What are the functions of the NCW?

The major functions and mandate of the NCW includes:

⁸¹ The document for the National Commission for Women Act, 1990 can be found at <http://www.wcd.nic.in/sites/default/files/ncwact.pdf>

- Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
- Present reports to central government on work done towards these safeguards;
- Make recommendations for effective implementation of such safeguards to Union or state governments;
- Review women related to legislations and bring out inadequacies and shortcomings;
- Take up cases of violation of law against women to appropriate authorities look into complaints and take suo-moto action
- Work towards women's rights
- Mitigating hardships of women and ensure welfare and relief
- Call for special studies or investigations into specific problems
- Participate in planning process of socio-economic development of women
- Commission evolves strategies to improve the status of women and take steps to ensure women's development.

NCW also takes up complaints of women pertaining to crimes against women and has set up Parivarik Mahila Lok Adalat to provide speedy and cost-free dispensation of matters.

At the state level, State Commissions for Women have been set up on a similar pattern.

Questions/Discussion

Discuss the importance of National Commission for Women for the empowerment of women with disabilities in India?

National Commission for Women has played an effective role in strengthening women's rights. Discuss.

What are the suggestions you would like to give to National Commission for Women?

6.8 Laws that Protect Women's Rights

Besides common laws such as those relating to criminal provisions⁸² or civil laws⁸³, there are several laws which were passed during the British period such as Sati Abolition Act 1829 which prohibits the sati⁸⁴ and Widow Remarriage Act 1856 which legalized remarriage of widows. The personal laws or the laws that govern marriage, divorce, inheritance, adoption etc. are made applicable as per the religion a person may follow.

Later, when India gained independence, several other laws have been enacted such as

⁸² Such as those mentioned under the Indian Penal Code or other criminal laws relating to crime where a victim can make a complaint and register First Information Report or FIR against the culprit

⁸³ Those dealing with civil rights of a person such as property related laws, personal laws such as those relating to marriage, inheritance, custody of children etc.

⁸⁴ The custom followed by some Hindus where women were forced to die on the pyre of her husband.

- The Immoral Traffic Prevention Act 1956, which intended to combat trafficking and sexual exploitation of women for commercial purposes;
- The Dowry Prohibition Act, 1961, which prohibits giving and taking of dowry;
- The Maternity Benefit Act, 1961 amended in 2017 which protects the employment of women during the time of her maternity and entitles her to ‘maternity benefit’ – i.e. full paid absence from work in order to take care of her child which can be up to a period of 26 weeks according to the Government of India rules;
- The Equal Remuneration Act 1976 provides for payment of equal remuneration to men and women workers, for the same work or work of similar nature, and prohibits discrimination against women in matters of employment;
- Indecent Representation of Women Act 1986, prohibits indecent representation of women through advertisements, writing, painting or any other manner;
- Child Marriage Prohibition Act 2006, which prohibits marriage of children – females below 18 and males below 21 years of age

Under the National Legal Service Authority Act, 1987, provisions have been made so that a woman, a child, a mentally ill or otherwise disabled person, a member of schedule caste or schedule tribe, a workman, a victim of disaster, flood, ethnic violence etc. can obtain free legal aid and services.

Some of the laws specifically related to Sexual Violence which have been enacted more recently, which will be discussed in greater detail in this module are -

- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Protection of Children against Sexual Offences Act 2012
- Criminal Law Amendment Act 2013
- Protection of Women Against Domestic Violence Act 2005

Questions/Discussion

What are the major women-friendly laws in India?

When the Constitution of India guarantee equality on the basis of sex why do we need to create women-friendly laws?

Article 15 of the Constitution talks about affirmative discrimination. Discuss.

6.9 Law to Prohibit, Prevent and Redress Sexual Harassment of Women at Work Place How was this law formulated?

In 1992, Bhanwari Devi was a community worker (*saathin*) working with the State of Rajasthan towards the prevention of the practice of child marriages and other social issues. During the course of her work, she prevented the marriage of a one-year old girl in the community. Her work was met with resentment and attracted harassment from men of that community. Bhanwari Devi reported this to the local authority but no action was taken. Bhanwari was subsequently gang-raped by those very men. Her case highlighted the ever-

present sexual harm to which millions of working women are exposed across the country, everywhere and every day. It also shows the extent to which that harm can escalate if nothing is done to check sexually offensive behavior in the workplace at the outset. Based on the facts of Bhanwari Devi's case, a Public Interest Litigation (PIL) was filed by Vishaka and other women's groups against the State of Rajasthan and Union of India before the Supreme Court of India. It proposed that sexual harassment be recognized as violation of women's fundamental right to equality, and that all workplaces/ establishments/ institutions be made accountable and responsible to uphold this right.

6.9.1 Vishakha Guidelines

In a landmark judgment, *Vishaka vs. State of Rajasthan* (1997), the Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Vishakha guidelines included:

- A definition of sexual harassment;
- Shifting accountability from individuals to institutions;
- Prioritizing of prevention of Sexual Harassment at Work place;
- Provision of an innovative redressal mechanism for Sexual Harassment at the workplace.

The Supreme Court defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct. Examples include sexually suggestive remarks about women, demands for sexual favors, and sexually offensive visuals in the workplace. The definition also covered situations where a woman could be disadvantaged in her workplace as a result of threats relating to employment decisions that could negatively affect her working life. It placed responsibility on employers to ensure that women did not face a hostile environment, and prohibited intimidation or victimization of those cooperating with an inquiry, including the affected complainant as well as witnesses. It recommended the establishment of redressal mechanisms in the form of a Complaints Committee at the workplace, which will look into matters of sexual harassment of women at the workplace. The Complaints Committees were mandated to be headed by a woman employee, with not less than half of its members being women, and provided for the involvement of a third-party person/NGO expert on the issue, to prevent any undue pressure on the complainant. The Vishakha guidelines extended to all kinds of employment, from paid to voluntary, across the public and private sectors.

Having raised the bar of responsibility and accountability in the Vishakha Guidelines, the Supreme Court placed an obligation on workplaces, institutions and those in positions of responsibility, to uphold working women's fundamental right to equality and dignity at the workplace.

Three key obligations were imposed on institutions to meet that standard, namely

- Prohibition
- Prevention
- Redressal

However, although mandated by the above Guidelines, that the employers should create strategies to prohibit, prevent and redress workplace harassment yet experiences reveal that not all workplaces have formulated such committees. Therefore, the women's movement in India advocated for a separate law and in 2013 the Government of India notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

6.9.2 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to ensure safe working spaces for women and to build enabling work environments that respect women's right to equality of status and opportunity. An effective implementation of the Act may contribute to the realization of their rights to gender equality, life and liberty, equality in working conditions. The sense of security at the workplace would improve women's participation in work, resulting in their economic empowerment and inclusive growth.

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the rights of all women including working or visiting any workplace whether in the capacity of regular, temporary, adhoc, or daily wages basis are protected under this Act.

It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be expressed or implied.

The Act is made applicable in organized as well as unorganized sectors. A workplace will include "any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey."

What is Sexual harassment?

"Sexual Harassment" includes anyone or more of the following unwelcome acts or behavior (whether directly or by implication), namely:

1. Physical contact or advances;
2. A demand or request for sexual favors;
3. Making sexually colored remarks;
4. Showing pornography;
5. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

Some examples of behavior that constitute sexual harassment at the workplace include:

1. Making sexually suggestive remarks or innuendos;
2. Serious or repeated offensive remarks, such as teasing related to a person's body or appearance;
3. Offensive comments or jokes;
4. Inappropriate questions, suggestions or remarks about a person's sex life;
5. Displaying sexist or other offensive pictures, posters, MMS, SMS, WhatsApp, or e-mails;
6. Intimidation, threats, blackmail around sexual favors;
7. Threats, intimidation or retaliation against an employee who speaks up about unwelcome behavior with sexual overtones;
8. Unwelcome social invitations, with sexual overtones commonly understood as flirting;
9. Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit;
10. Physical contact such as touching or pinching;
11. Caressing, kissing or fondling someone against her will (could be considered assault);
12. Invasion of personal space (getting too close for no reason, brushing against or cornering someone);
13. Persistently asking someone out, despite being turned down;
14. Stalking an individual;
15. Abuse of authority or power to threaten a person's job or undermine her performance against sexual favors;
16. Controlling a person's reputation by rumor-mongering about her private life.

To deal with all such harassment, it is the duty of the employer to create the Internal Complaints Committee (ICC) through a written order. At the local level, the Local Complaint Committee LCC needs to be constituted by the District Officer which would deal with complaints against the employers, or where the complainant is a domestic worker or where a woman is working in an organization where the number of employees is less than ten.

Both LCC and ICC are comprised of a chairperson who shall be a senior-level employee, with a minimum two members and a member from a NGO/association committed to the cause of women. All Complaints Committees must have 50 per cent representation of women. ICC or LCC members shall hold their position for a period not exceeding three years from the date of their nomination or appointment.

The ICC or LCC, as the case may be, will conduct a fair and informed enquiry within 90 days after receipt of a complaint and will submit its report to the employer. The employer is bound to take action on the basis of the report within 60 days.

Questions/Discussion

What provisions under Vishakha guidelines are incorporated under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013?

How can you help a woman who is facing sexual harassment at her work place?
In case, any employer has not formulated the ICC what can be done?

6.9.3 Protection of Women from Domestic Violence Act 2005

In the year 2005, the Protection of Women from Domestic Violence Act (PWDVA) was enacted. This law provides civil remedies to the victims of domestic violence. Before enactment of this law, in order to seek any civil remedies such as divorce, custody of children, injunctions in any form or maintenance, a woman had to go to a civil court.

The Domestic Violence Act now provides all such remedies and recognizes the right of a woman to live in a violence-free home. The major objective of this law is to stop incidents of domestic violence and provide instant support to a woman who faces violence within the domestic setting. The law operates as a single window system to provide women access to justice. The idea is to prevent multiplicity of proceedings and procedures.

The law recognizes the immediate needs of a battered woman for emergency relief. She has the right to obtain services of protection officers, service providers, police, shelter homes and medical facilities recognized under the law.

She also has the right to simultaneously file her complaint under Section 498A of the Indian Penal Code.

She can obtain:

Protection Order/ Stop Violence Order: Where a woman facing violence may make application before the court. After hearing both the parties, the Magistrate may issue an injunction to the violent family member to stop committing any further act of violence, stop communicating with the aggrieved woman in any manner, prevent the respondent from alienating the woman from property owned jointly by both the parties, and any such order which the Magistrate deems suitable.

Residence order: This order may be passed by the court where the woman is thrown out of the house but she wishes to stay in her matrimonial home⁸⁵ or shared household. The objective of this order is to ensure that a woman has a safe place to reside. The court can also direct the perpetrator to provide alternative accommodation to the woman.

Compensation order - A Magistrate may direct the respondent to pay **compensation** and damages to the aggrieved person for causing injuries to her including those for mental torture and emotional distress. A woman can ask for compensation order if she sustained physical or mental trauma.

An **order for monetary relief** can be passed by the court in case a woman has incurred expenditure as a result of violence. This may include expenses incurred by the woman on obtaining medical treatment, any loss of earnings, damage to property etc. She can also claim maintenance from her male partner. The Magistrate may direct the respondent to give the

⁸⁵ The household where the aggrieved woman is residing with her husband and his family after her marriage.

aggrieved person and her children monetary relief to meet the expenses incurred or losses suffered.

The Magistrate may grant temporary **custody of the children** to the aggrieved woman or any other person making an application on her behalf. This is to prevent a woman from being separated from her children, which itself is an abusive act.

Interim/Ex-parte Orders: An interim order can be given by the court at the time the proceedings are initiated under the PWDVA and before a final order is passed. This is to ensure that women are not detrimentally affected during the course of the legal proceedings. The court can grant interim orders after an application is filed and the presiding officer feels that it will be in the interest of justice. In order to get interim orders, a woman has to show that she has faced or she is facing violence, or fears the threat of violence. An **ex-parte order** means an order that is passed in the absence of the other party to the dispute. Such orders are interim in nature and passed only if there is an immediate danger to the person making the application or when the other party refuses to appear in court despite prior intimation given by the court.

If the abuser violates any of the above orders, it is deemed a punishable offence. Punishment for violation of the Protection Order could extend to imprisonment of one year and/or a maximum fine of Rs 20,000/-

Questions/Discussion

Why do you think the Right to Residence is such a central provision under the Domestic Violence Act?

Can a woman also file a criminal complaint under Section 498A in case she has already filed an application under the Domestic Violence Act?

In case, a man violates a Protection Order what can a woman do?

6.9.4 Protection of Children from Sexual Offences (POCSO) Act, 2012

In order to address heinous crimes of sexual abuse and sexual exploitation of children this law was introduced in 2012 to provide a robust legal framework for the protection of children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest of the child at every stage of the judicial process.

The objectives of POCSO Act are:

- To protect children from offences of Sexual Assault, Sexual harassment, Pornography;
- To establish special courts to try such offences.

What are the salient features of this law?

It defines a child as anyone below the age of 18 years. The law is a gender-neutral law wherein it takes cognizance of sexual crime committed against both boys and girls under the age of 18 years. It addresses a wide range of sexual offences which include anything from complete and partial penetration, non-penetrative sexual assault, stalking a child, showing child pornography, or using the child for pornography and exhibitionism. The law provides that under certain specific circumstances a sexual assault is to be considered “aggravated if the abused child is mentally ill or when the abuse is committed by a member of the armed forces or security forces or a public servant or a person in a position of trust or authority of the child, like a family member, police officer, teacher, or doctor or a person-management or staff of a hospital — whether Government or private.” The punishment for aggravated sexual assault could be imprisonment which is not less than ten years or life imprisonment and fine. The law places the burden of proof on accused. The Act does not recognize consensual sexual acts among children or between a child and an adult. Therefore, any person engaging in a sexual act with a child is liable for prosecution irrespective of whether the child has ‘consented’ to it or not. When the sexual offence is committed by a person in a position of trust or authority to a child, the punishment is more severe.

Certain child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences have been instituted. For example, designated Special Courts are to be set up for trial of such offences. The Act mandates that the Special Courts shall create a child-friendly atmosphere and allow the child to be accompanied by a family member/ guardian/ friend or relative in whom the child has trust or confidence to be present in the court. The child must not be brought face to face with the accused while giving her/his statement to the Police or the Magistrate, or while testifying. A child’s statement must be recorded at his or her residence or a place where he or she usually resides or at a place of his or her choice. Under no circumstances can a child be detained in the police station in the night. The police officer must also try and ensure that the statement is recorded by audio-visual means.

The Act provides that a police officer must seek the assistance of a qualified special educator or a person familiar with the manner of communication of the child or an expert in that field, while recording the statement of a child with mental or physical disability.

The law regards the best interests and well-being of the child as being of paramount importance at every stage of the proceedings. POCSO Act safeguards the rights and dignity of the child.

The POCSO Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine. In 2018, the law has been amended to provide minimum twenty years rigorous imprisonment to maximum death punishment to the perpetrator who rapes a girl below 12 years of age. Police officers committing rape will be punished with minimum ten years of imprisonment. No anticipatory bail will be granted to the person who is accused of raping a minor (below 16 years of age). The Special Court may pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage of the proceedings.

Question /Discussion

Why was there a need to enact a special legislation for Protection of Children against Sexual Offenses Act?

If you find a child who is facing harassment what do you think you can do to help that child?

In case a police man is indulging in the act of sexually assaulting a child, what can be done?

6.9.5 Criminal Law Amendment Act

After the Delhi gang rape case that took place in 2012, also known as Nirbhaya case, the government appointed a committee headed by Justice J.S. Verma on December 22, 2012. This committee submitted its report on January 23, 2013. On the basis of the recommendations of the committee, the Criminal Law Amendment Act was passed in 2013. This law made amendments in the existing laws relating to sexual crime, rape, evidence and punishment.

It made trafficking of a person a serious offence. Anyone who exploits, uses threat, coerces, abducts, defrauds or deceives or forces any person for slavery, prostitution, forced organ removal and similar such crimes would be punished for at least seven years of imprisonment.

In addition to the above offences, this law also created certain new offences such as protection of women against acid attacks, sexual harassment, voyeurism⁸⁶ and stalking⁸⁷.

It also enlarged the definition of rape, and made touching private parts an offence. It made stringent provisions in situation of custodial rape, gang rapes and in cases where women are left in vegetative state after rape. In such cases an offender can be imprisoned for not less than twenty years extending to life imprisonment. He could also be made liable to pay compensation to the victim. The amount of such compensation should be reasonable to meet medical expenses and rehabilitation of the victim. Also, any sexual activity with a woman below 18 years of age would constitute rape irrespective of the fact whether she has given her consent or not.

Nirbhaya Funds was announced in 2013 when a corpus of Rs 1000 crores has been set up for the empowerment, safety and security of girls and women. Some of this fund has been utilized for several schemes such as creating safe cities for women, ensuring safe public transport and other programmes.

⁸⁶ Section 354 C of the Indian Penal Code define voyeurism as 'any man who watches or capture the image of a woman engaging in private act in circumstances where she would usually have no expectation of not being observed either by perpetrator or any other person at the behest of perpetrator or disseminate such image shall be imprisoned and fines. Imprisonment could be from minimum one year to maximum three years and for second conviction imprisonment could be of seven years.

⁸⁷ Section 354 D of the Indian Penal Code says that any man if follows a woman, contacts or attempts to contact her despite a clear indication of disinterest by such woman could be imprisoned for three years and could also be fined. Also, if a man monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking

Questions/Discussion

How has Criminal Law Amendment Act changed the definition of Sexual Violence against Women?

Stringent punishments may help to deter and prevent the crime. Discuss.

Can the provision of death penalty act as a deterrent to prevent a crime?

6.9.6 Rights of Persons with Disabilities Act 2016

The Rights of Persons with Disabilities Act 2016⁸⁸ has been enacted with the object to give effect to the United Nation Convention on Rights of Persons with Disabilities⁸⁹. The law provides for rights and entitlements of persons with disabilities and include:

- The right to equality and non-discrimination
- Responsibility of the appropriate government to take effective measures to ensure that the women and children with disabilities enjoy their rights equally with others
- Scope of the act has been expanded to include range of persons including acid attack victims
- Every child with disability between 6 to 18 years of age shall have the right to free education
- State should take measures to protect persons with disabilities from torture, cruel and inhuman treatment
- State should take measures to protect persons with disabilities from all forms of violence, abuse and exploitation and shall provide legal remedies, free legal aid, maintenance and rehabilitation of victims and also create awareness among public
- State shall ensure equal protection and safety to persons with disabilities in situation of risk, armed conflicts, humanitarian emergencies and natural disaster.
- No person shall be subjected to any medical procedure which leads to infertility without her free and informed consent
- State shall ensure that the persons with disabilities have equal right to inherit property and control financial affairs including access to bank loans, mortgages, and other financial credit.
- State shall ensure support to women with disability for livelihood and for bringing up her children
- State shall ensure special provisions for health care and medical facilities and should provide for medical insurance and other schemes for prevention of disabilities

⁸⁸ Act No. 49 of 2016

⁸⁹ UN General Assembly (2007) United Nations Convention on Rights of Persons with Disabilities adopted on 13.12.2006 A/RES/61/106

- Special courts be created for speedy trial for trying offence under this law and special public prosecutor to be appointed to deal with such cases
- Any person who insults, humiliates, assaults or outrage the modesty of the person with disability may be imprisoned for six months to five years and maybe fined.
- Also, if any person who is a custodian or a guardian of disabled person if deprives him or her with food or fluids may be penalized
- If any person sexually exploits a disabled person may be imprisoned and fined
- Any person who performs or conducts or directs any medical procedure which may lead to termination of pregnancy of women with disability without her expressed consent may also be penalized
- Designated courts with deal with such cases

The Act focuses on non-discrimination besides full and effective participation and inclusion of persons with disabilities in society. It provides for respect for difference and acceptance of disabilities as part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women, respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities.

Supreme Court in a case helps a girl suffering from thalassemia to a medical course at Chhattisgarh after a board opined that she was eligible to get reservation under the Right to Persons with Disability Act 2016⁹⁰.

In 2017, a doctor at Delhi University has lodged a case under this law against a Minister in UP for publicly ridiculing a disabled employee at the state commission for disabled persons in Uttar Pradesh⁹¹

6.10 Some Cases Where Laws Have Helped Women's Cause

In *Mary Roy versus State of Kerala*⁹², the Supreme Court has held that Christian women are entitled to have equal share in their father's property. Till then, Christian women in Kerala were governed by provisions under the Travancore-Kochi Christian Succession Act where a daughter can inherit only one-fourth of the share of a son in father's property. But the Supreme Court in this case held that Christian daughters are entitled to equal share as that of a son in their father's property.

⁹⁰ Sinha Badhra (2017) Supreme Court helped the Girl with Thalassemia Join Medical Course, The Times of India, August 21

⁹¹ Gohan MP (2017) Delhi University doctor stands up for UP Government employee's rights, The Times of India, April 23

⁹² 1986 AIR SC1011

In *Pratibha Rani versus Suraj Kumar*⁹³ the Supreme Court held that the *Stridhan*⁹⁴ property of a married woman has to be placed in her custody, and she enjoys complete control over it. The mere fact that she is living with her husband and using the dowry items jointly does not make any difference and does not affect her right of absolute ownership over them.

In *Danial Latifi versus Union of India*⁹⁵ the apex court recognized that a Muslim husband is liable to make reasonable and fair provisions for the future of the divorced wife which obviously includes her maintenance extending beyond the *Iddat*⁹⁶ period and same must be made by the husband within the *Iddat* period. Further a divorced Muslim woman who has not remarried and who is not been able to maintain herself after *Iddat* period can proceed under the Muslim Women (Protection of Rights on Divorce) Act 1986, against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death from such divorced woman including her children and parents. In case of any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the said Act to pay such maintenance.

In *Lata Singh versus State of Uttar Pradesh*⁹⁷ the Supreme Court said that there is no bar in inter-caste marriage under the Hindu Marriage Act 1956 and a woman, if she is above 18 years of age and is of sound mind can 'marry anyone she likes or live with anyone she likes'.

In *Sakshi versus Union of India*⁹⁸, the Supreme Court stated that while conducting trial in cases of sexual abuse or rape, a child must be protected and a special screen must be made so as to ensure that the victim or witness do not see the body or the face of the accused. Also, the questions for cross examination of the witness must be framed and should be given to the Presiding officer who must then put it to the victim or witness in language that is clear and is not embarrassing. Adequate breaks must be given to the victims of child abuse or rape while they give their testimony in the court.

In *State versus ABC*⁹⁹ the Supreme Court in this landmark judgment declared that, an unwed mother is not bound to disclose the name of child's father and also that she would have all the rights as guardian to child under guardianship rights. She need not take father's consent for guardianship rights. It is necessary to protect the child from social stigma, but also protect the mother's fundamental rights.

In *Laxmi versus Union of India*¹⁰⁰, the Supreme Court gave direction to the government to take steps to stop acid attacks and restrict and regulate the sale of acid to curb the increasing number of cases of acid attacks against women.

⁹³ 1985 AIR SC 628

⁹⁴ *Stridhan* is the property that belongs to a woman and includes gifts given to her at the time of her marriage by her parents, husband, in-laws and other relatives

⁹⁵ Writ Petition (civil) 868 of 1986

⁹⁶ In Islam, *iddat* is the period a woman must observe after the death of her husband or after her divorce, during which she may not marry another man

⁹⁷ 2006 (6) SCALE 583

⁹⁸ AIR 2004 SC 3566

⁹⁹ SLP (Civil) No. 28367 of 2011, decided on 6 July 2015

¹⁰⁰ (2014) 4 SCC 427

In *Delhi Domestic Working Women's Forum versus Union of India*¹⁰¹ the Supreme Court gave broad guidelines to assist victims of rape and hold the state accountable to provide legal assistance to women. The Court also directed that compensation should be provided to the women victims.

In *Air India Vs. Nargesh Mirza*¹⁰² the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy, as arbitrary and abhorrent to notions of a civilized society.

In *Sheela Barse v Union of India*¹⁰³ the court upheld the dignity of disabled children and instructed the state to take care of mentally and physically challenged children lodged in various jails into a home where they could be properly looked after and be given proper treatment and care. Further, the court ordered to provide vocational training to physically handicapped children to enable them to earn their livelihood.

While dealing with the restriction on entry of women of the age group of 10 to 50 years at the Lord Ayyappa Temple at Sabarimala, Kerala, the Court in *Indian Young Lawyers Association versus State of Kerala*¹⁰⁴ very succinctly held that in no scenario, can it be said that exclusion of women of any age group could be regarded as an essential practice of Hindu religion. On the contrary, it is an essential part of the Hindu religion to allow Hindu women to enter a temple as devotees and followers of Hindu religion and offer their prayers to the deity.

Section 497 IPC had relegated the position of married women in so far that anyone having physical relation with her without the connivance of her husband was guilty of adultery and thereby disregarding the right of married woman over her own person. Recently the apex court held in *Joseph Shine vs. Union of India*¹⁰⁵ that 'any provision of law affecting individual dignity and equality of women invites wrath of the Constitution. It's time to say that the husband is not the master of the wife. Legal sovereignty of one sex over other sex is wrong'. The court, however, reiterated that the judgment is not to be understood as a license to have extramarital relations.

In *Chairman, Railway Board versus Chandrima Das*¹⁰⁶ the Court has held that women are entitled to lead life with dignity and they should be respected as equal citizens. Their honor and dignity cannot be violated. Rape is a crime which violates victim's most cherished fundamental rights, including the right to life and privacy as enshrined under Article 21 of the Constitution. Court has also provided compensation to the rape victim.

In *Suchita Shrivastava v Chandigarh Administration*¹⁰⁷ the Supreme Court upheld the rights of a woman as prescribed by the Convention on Right to Persons with Disabilities, whom they identified as mentally retarded and stated that "Her reproductive choice should be respected in spite of other factors such as the lack of understanding of the sexual act as well as

¹⁰¹ 1995 SCC (1) 14

¹⁰² 1981 AIR 1829,

¹⁰³ JT 1988 (3) 15

¹⁰⁴ WRIT PETITION (CIVIL) NO. 373 OF 2006

¹⁰⁵ WRIT PETITION (CRIMINAL) NO. 194 OF 2017

¹⁰⁶ AIR 2000 SC 988

¹⁰⁷ (2009) 9 SCC 1

apprehensions about her capacity to carry the pregnancy to its full term and the assumption of maternal responsibilities thereafter". The Court said that the Medical Termination of Pregnancy Act 1971 requires the consent of mentally challenged woman for termination of her pregnancy and in this case the woman has expressed her willingness to bear the child therefore her pregnancy could not be terminated.

Questions/Discussion

How has the law helped survivors of violence to get justice in the courtroom?

Law has pitfalls. Discuss.

Do you think that law is enough to deter the crime against women? If no what else should be done?

Summary

At international level, several efforts have been made to protect and promote the rights of women as human rights. CEDAW is one of the significant conventions that calls for elimination of all forms of discrimination against women. India has ratified CEDAW and therefore the Indian state is bound to protect and promote gender equality

At national level, the Constitution of India upholds the principle of equality and justice. These principles are enshrined in the Preamble of the Constitution, besides they are also written in the Fundamental Rights and Directive Principles of State Policy. The Constitution empowers the state to adopt measures that affirm substantive equality through positive discrimination.

The women's movement in India has played a significant role in shaping and defining the laws and shaping policies which protect women from violence within homes, at workplaces and at public places. The Report 'Towards Equality', highlighted that though the Constitution of India guarantees equality on the basis of sex, yet women in India could not enjoy the benefits of these provisions. A National Commission for Women was constituted in 1992 to advise the government on issues affecting women. Amendments were made to the Constitution in 1992, known as 73rd and 74th amendments wherein one-third seats have been reserved for women in local bodies such as Panchayats and Municipalities. The National Policy for Empowerment of Women was made in 2001 with the goal of promoting women's rights.

When the Supreme Court pronounced its decision in the Mathura Rape case, there were public protests, especially by the women's movement, and the criminal law relating to rape was amended then. Further, after Nirbhaya rape case in 2012, Justice Verma Committee was formulated and on the basis of its recommendations, amendments have again been made in the Criminal law provisions.

POCSO Act was introduced in 2012 to address the heinous exploitation of children below 18 years of age.

Under the Protection of Women against Domestic Violence Act which was introduced in 2005, any woman or child facing violence in domestic relationship within the confines of home can claim relief. This includes legally wedded wives who may be abused. Also mothers, sisters, daughters, widows, women in bigamous relationship, women who are victim of invalid or illegal marriage relationships or women in live-in relationships can claim reliefs under this law. Any woman who faces domestic violence can obtain different orders such as Protection Orders, Residence Orders, Monetary Relief, and Custody Order for her children, Compensation Order and Interim/Ex-parte orders through the courts.

A married woman can also file a criminal complaint under Section 498A of the Indian Penal Code against her husband and in-laws. Abusers can be punished under this law. The maximum punishment is imprisonment for three years and fine, as may be decided by the court.

In several cases, the courts have interpreted the laws in a manner to protect women's rights and promote equality on the basis of sex.

Activity

Make 6 small groups, with equal number of participants in each group. Each of the groups has to discuss one of the following case studies, and write the answers to the questions at the end. Finally, one person from each small group will share their case study with the answers they have made, with the whole group. There can be discussion in the big group as well regarding each case study and its treatment by the concerned small group.

1. Sarika¹⁰⁸ is working for Hindustan Airlines as a pilot along with Ashok, her batch-mate. Both have similar experience and qualifications. After a year of training, the Airlines asks Ashok to join the pilot crew but Sarika was denied this position and instead was asked to take up the ground duty. When she wrote to the management, she was told that being a woman she is not fit to fly the plane.

Why do you think the management denied Sarika the position of pilot when she got requisite training and experience?

Is this a violation of the right to equality?

How do you think it would affect Sarika?

What do you think Sarika might do?

Who else can and should support Sarika in her fight for justice?

2. Chitra was sexually harassed at her office. Her manager passed lewd comments and would call her in his room and try to touch her inappropriately. When she objected to this harassment she was terminated from her job. She tried to give her complaint to the ICC but no action was taken, rather she was humiliated¹⁰⁹.

¹⁰⁸ This is a hypothetical situation. However, for more details refer to the case of *Air India v Nergesh Mirza* 1981 AIR 1829

¹⁰⁹ The name has been changed to protect the identity of the person, however this is one of the case, the author has handled during her practice as a lawyer and an activist

Is this a denial of her rights and integrity?

How do you think Chitra would be affected by the situation?

Can Chitra go to the Court against her manager as well as the company?

Do you think she should approach the State Women's Commission or the NCW?

Who else can support Chitra in her fight for justice?

3. Rani¹¹⁰ is 13-year-old girl who was sexually molested by her teacher in school. She came home crying. Her mother talked to the Principal but he denied and threatened her mother that if she says anything against the school or the teacher, Rani will be thrown out of the school.

What do you think of the behaviour of the principal and of the teacher?

How do you think Rani would be affected?

What do you think Rani's mother should do?

Can she approach the Child's Protection Commission under the POCSO Act?

Can she approach the police station to register FIR against the school and the said teacher?

Who all should help Rani's mother in her fight for justice?

4. Komal¹¹¹, a 19-year-old woman living in Lucknow, refused an untoward advance made by her neighbor Mukesh, a 28-year-old man. One day, Mukesh threw acid on Komal while she was walking towards her college. She was admitted to hospital where the doctor declared that her eye needs to be operated. This involves considerable expenses.

What do you think of Mukesh's behavior?

How do you think Komal would be feeling?

What do you think Komal and her family can do?

Can they file a case against Mukesh?

Can Komal or any family member on her behalf ask for compensation to be paid so that the money could be utilized for her treatment?

What institutions should help and support Komal and her family in their struggle for justice, and proper medical treatment for Komal?

5. Asha¹¹², a 17-year-old girl was gang-raped by a few men residing in the same village. The police refused to register her complaint or First Information Report because the men who raped her belong to higher caste and were influential.

What do you think of the action of the men who raped Asha?

¹¹⁰ The name has been changed here to protect the identity of the person, however, this is a case handled by the author in her professional capacity as a lawyer and an activist

¹¹¹ This is a hypothetical situation.

¹¹² The name has been changed to protect the identity of the person, however, the author has dealt with the similar case.

What do you think of the behaviour of police who refused to register an FIR?
What do you think Asha or her family members can do?
Can they go to the Magistrate and directly file an application to take cognizance and direct the police to file complaint?
Can Asha also seek compensation for medical treatment and rehabilitation?
What action should be taken against the men who gang-raped her?
Who all should support Asha and her family in their struggle for justice?

6. Neha¹¹³, a 28-year-old woman got married at the age of 25. She was working as a computer operator with a private company and was earning 20,000/ Rupees. After her marriage, she has been harassed for dowry by her husband and was beaten regularly. He also blamed her character and forced her to live her job. She got a one-year old daughter named Kajal. Then one day, her husband tried to sprinkle Kerosene on her and burn her. She got 40 percent burn and was admitted to hospital by one of the neighbors who also called her parents from Kanpur. Her parents took her daughter with them because Neha's husband has refused to take care of her.

What do you think Neha should do?
Should she file a complaint against her husband under Section 498A and 304 B of the Indian Penal Code for Dowry and domestic violence?
Can she seek protection orders under the Domestic Violence Act?
Can Neha request the court for providing her maintenance and interim relief?
How can her parents help Neha in getting justice?
What are the rights of Kajal in this situation?
How can Neha protect the rights of her daughter Kajal?

7. Archna¹¹⁴ got married to Suhel six years back. A daughter is born out of the wedlock. Suhel wanted a son. He threw Archna out of her house with the child. Right now, she is staying at her parent's house.

What do you think Archna should do?
Can she file an application for claiming maintenance for herself and her daughter?
Can she go back and stay at her matrimonial home? What order will she require from the court in that case?

8. Rekha is working with an autonomous institution. An IAS officer from another Ministry was deputed to her organization who tried to molest her. She made a complaint to ICC but the officer tried to forge papers and reported that she has been involved in a corruption matter. He also made adverse comments in her performance report on the basis of which she was denied increments and promotion.

¹¹³ The name has been changed to protect the identity of the person. The author met the person in the similar circumstances in one of the courts in Delhi

¹¹⁴ This case is dealt by the author in her personal capacity as an advocate

What do you think Rekha should do?
Can she file a FIR against this officer?
Can she write to her department indicating that the officer is using his influence to stop her increments and promotions?

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7. Disability Specific Laws In India¹¹⁵

Sunakshi Bajpai

Objectives

This module will help the reader to understand:

- International laws with a focus on the United Nations Convention on Rights of Persons with Disabilities (UNCRPD 2006) in the Indian context;
- Provisions guaranteed under the Constitution of India for disabled persons;
- National Laws on Mental Health – Indian Lunacy Act 1912, Mental Health Act 1987, and National Mental Healthcare Act 2017;
- National Laws related to Disability - Rehabilitation Council of India Act 1992, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the National Trust Act 1999, National Policy for Persons with Disabilities, 2006 and Rights of Persons with Disabilities Act 2016.

7.1 Introduction

Human Rights are Universal rights available to all persons irrespective of their race, color, sex, language, class, caste, place of birth, political or other opinions etc. This is mentioned in the Universal Declaration of Human Rights (UDHR)¹¹⁶. Interestingly, the realities are far from ideal for Persons with Disabilities. They form a minority group which is entitled to the same rights as others, but these rights are more often than not denied to them. Access to education, employment opportunities, health facilities, public spaces, public transport, justice delivery systems and etc. is ridden with barriers which are both physical and attitudinal. These factors lead to marginalization of this group, pushing it further towards poverty. Needless to say, women in most societies, form a cohort which is oppressed due to the patriarchal structures. This makes Women with Disabilities (WWDs) a sub-group which is more vulnerable to violence than their non-disabled counterparts. They face double marginalization on account of their gender and disability. Negative attitudes of people around them, lack of sensitivity of law enforcement officials to their specific needs, the fear of being abandoned, stigma and limitations caused by their impairment contribute to this vulnerability. The road to justice for these women is long and tedious. Lack of financial support and awareness of their rights further escalate their problems. When an act of violence happens to a woman with disability, often she does not know that her right has been violated, let alone the need to use a legal redressal mechanism to access justice. These acts can be physical violence,

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¹¹⁶The document for Universal Declaration of Human Rights is available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

sexual violence, economic violence, domestic violence, institutional violence, and cyber based violence. Violence may be physical, verbal, emotional, economic etc.

The aim of this module is to discuss the legal and constitutional rights provided to Persons with Disabilities, specifically Women with Disabilities, in India. It intends to cover both international and national laws enacted in this arena.

7.2 International Laws

In the context of disability laws in most countries in the world, the United Nations has played a very important role in pushing member countries to enact disability specific legislations. For instance the PWD act 1995 was modelled on the American with Disabilities Act 1990 and the Rights of Persons with Disabilities Act 2016 was a direct response to India's ratification of UNCRPD. Consequently, the significance of international legislations cannot be disregarded since they set common standards for legislations, as in the above examples which have proved useful for setting common standards for disability legislations. Those standards then need to be appropriately reflected in policies and programmes that reach Persons with Disabilities.

7.2.1 United Nations Convention on the Rights of Persons with Disabilities (UNCRPD 2006)¹¹⁷

The UNCRPD 2006 is the first elaborate treaty addressing human rights of 21st century. It is an international treaty that aims to protect the rights and dignity of Persons with Disabilities. It was adopted by the United Nations General Assembly in 2006 and entered into force in 2008. It is legally binding on the Member States who are State Parties (currently 177 member states including India). India signed the UNCRPD and subsequently ratified the same on 1st October, 2007. Being a signatory to the Convention, India has an international obligation to comply with the provisions of the Convention.

The UNCRPD is a normative framework to ensure that Persons with Disabilities are included in all development programmes by the Member States. The overarching goal of the UNCRPD is to ensure equality and non-discrimination in the realization of the rights of Persons with Disabilities. The Convention follows decades of work by the United Nations to change attitudes and approaches to persons with disabilities. It transforms thinking -- from viewing persons with disabilities as 'objects'; of charity, medical treatment and social protection, towards viewing persons with disabilities as 'subjects' with rights, who are capable of claiming those rights and making decisions for their lives based on free and informed consent as well as being active members of society.

The Convention has 50 articles which mention the purpose of UNCRPD, its principles, obligations, and a number of specific measures intended to give effect through concrete means to the principles of the Convention. The UNCRPD outlines that Persons with Disabilities include those who have long term physical, mental, intellectual and sensory

¹¹⁷The UNCRPD official document can be found at <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

impairment which, in interaction with other barriers, may hinder their full and effective participation in society on equal basis with others. It directs the focus of the member states to remove barriers to participation of Persons with Disabilities.

The principles on which the Convention is based are given in Article 3. These are important as they affirm the human rights of Persons with Disabilities. They are referred to as General Principles and are given as follows -

- **General Principle 1: Respect for inherent dignity, individual autonomy including the freedom to make one's choices, and independence of persons.**
- **General Principle 2: Non-discrimination to address any distinction or exclusion on the basis of disability, which hinders the rights of Persons with Disabilities to enjoy their rights and fundamental freedoms.**
- **General Principle 3: Full and effective participation and inclusion in society in all policy processes including monitoring.**
- **General Principle 4: Respect for difference and acceptance of Persons with Disabilities as part of diversity and humanity.**
- **General Principle 5: Equality of Opportunity.**
- **General Principle 6: Accessibility – this is a pre-condition and an end in itself, for Persons with Disabilities to live independently and participate fully and equally in society.**
- **General Principle 7: Equality between men and women.**
- **General Principle 8: Respecting the evolving capacities of Children with Disabilities.**

The Convention takes into cognizance the Rights of Women with Disabilities. In Article 6, it categorically recognizes that disabled women are subject to multiple discriminations, and directs member States to take necessary action. These actions should ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing full human rights and fundamental freedoms.

The basic right of disabled women to access justice is mentioned in Article 13. It mandates provisions like necessary disability related accommodations and sensitization trainings of field staff (working in the field of administration of justice). Article 15 of UNCRPD talks about freedom from torture, cruel, inhuman or degrading treatment or punishment. Women with Disabilities are often subjected to forced hysterectomies and this article prohibits any such processes.

In Article 16, there is emphasis on effective legislations and policies to ensure that instances of exploitation, violence and abuse against Women with Disabilities are identified, investigated and prosecuted.

Similarly, other articles of the Convention give guidelines on access to education and health, accessibility, work and employment.

Article 28, 2 (a) ensures that Women and Girls with Disabilities should have access to social protection programmes and poverty reduction programmes. For instance, Section 37 A of the Rights to Persons with Disabilities Act 2016 gives priority to women with disabilities reservation in development programmes and various developmental schemes. This is important as disabled women are at the forefront of economic discrimination which happens due to intersections of gender and disability.

The CRPD has arrangements for implementation and monitoring both nationally and internationally. Internationally, it has established a committee on the Rights of Persons with Disabilities consisting of independent experts with monitoring functions, and a Conference of State Parties to consider matters related to the implementation of the CRPD. States Parties are required to report on implementation of the CRPD periodically and receive recommendations on how to improve implementation.

Questions/Discussion

What do you think is the impact of UNCRPD on Indian Disability Laws?

7.3 Overview of Disability Specific Laws in India

Internationally, India is a signatory to the 'United Nations Convention on the Rights of Persons with Disabilities (UNCRPD 2006)'. It ratified the convention in 2007. The aim of the Convention is to guarantee human rights of Persons with Disabilities and eradicate all forms of disability-based discrimination. Besides the UNCRPD, India has been a signatory to most disability related resolutions like the 'Declaration on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region' (2000) and the 'Biwako Millennium Framework' (2002) among others.

During the 1980s, the struggle for Rights of Persons with Disabilities started in India, due to the lack of the state's attention to the needs and concerns of this group. Before 1987, all that India had for Persons with Disabilities was the Indian Lunacy Act 1912, which concentrated on the care, guardianship and property rights of persons with intellectual disability and mental illness. Due to the concerted effort of Persons with Disabilities along with their families and psychiatrists and social activists, the Mental Health Act of 1987 took shape. It superseded the Lunacy Act 1912 and focused on making better provisions for the care of Persons with mental illness, management of their property, and other issues.

The very recent Mental Healthcare Act 2017 which repeals the Mental Health Act 1987, is a paradigm shift as it takes a rights based approach. It seeks to promote rehabilitation and empower persons with mental illness.

The Rehabilitation Council of India Act 1992 regulates the training of rehabilitation professionals in the disability sector through standardized training courses. It also recognizes institutions providing these courses. The Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act 1995 was the first major disability legislation in the country. The Act provides for both the preventive and promotional aspects of

rehabilitation like education, employment and vocational training, reservation, research and manpower development, creation of barrier-free environment, rehabilitation of persons with disability, unemployment allowance for the disabled, special insurance scheme for disabled employees, and establishment of homes for persons with severe disability etc.

In 1999, the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act was passed. Its aim is to ensure that Persons having disabilities mentioned in the act lead an independent life, especially those not having any family support systems like after the death of their parent or guardian.

The National Policy for Persons with Disabilities 2006 deals with physical, educational and economic rehabilitation of persons with disabilities. In addition the policy also focuses upon rehabilitation of women and children with disabilities, barrier free environment, social security, research etc.

To give effect to UNCRPD in India, the Rights to Persons with Disabilities Act 2016 was enacted. This step is in line with the Article 253 of the Indian Constitution.¹¹⁸ The Act reflects a paradigm shift in thinking about disability from a social welfare concern to a human rights issue.

Questions/Discussion

Do you think there has been a radical change in the legal regime on Mental Health in India since the 1980s? If yes, what may be the reasons for this change?

7.4 Constitutional Provisions for Persons with Disabilities, in India (PWDs)

The Constitution of India¹¹⁹ is a foundational framework which gives a range of rights to all the Persons including PWDs. It specifically mentions disabilities in articles under Right to Equality and the Directive Principles of State Policy.

Article 15 of the Constitution prohibits discrimination on the grounds of "religion, race, caste, sex, place of birth or any of them". 15 (2) says that no citizen on grounds of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

The Constitution abolishes Untouchability and marks its practice in any form as forbidden under Article 17. The enforcement of any disability i.e. any form of discrimination on the grounds of Untouchability is declared an offence punishable in accordance with law.

¹¹⁸Article 253 in the Constitution of India 1949 – Legislation for giving effect to International Agreements, Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

¹¹⁹ The document for the Constitution of India can be accessed at https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf

Both Articles 15 and 17 are covered under Right to Equality in Part 3 on Fundamental Rights in the Constitution.

The Directive Principles of State Policy (Article 36 to 51) of the Constitution mention:

Article 39A says that the State should ensure that legal systems are operated in a way that they promote justice, on a basis of equal opportunity. The right to secure justice should not be denied to any citizen by reason of economic or other disabilities. Free legal aid should be given to citizens if needed through suitable legislation or schemes.

Article 41 says, the State shall make provisions for ensuring the right to work, education and public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want. The State shall endeavor to provide for free and compulsory education for all children including children with disabilities until they complete the age of 14 years.

Furthermore, Article 46 gives the State the responsibility of promoting with special care the educational and economic interests of weaker sections of the people, which includes persons with disabilities

It must be noted that the meaning of the term disability in this context is quite different from the way in which it is defined in UNCRPD and in disability specific laws in India such as PWD Act 1995 and 2016. This difference must be understood in a historical perspective since the meaning attributed to disability as a result of disability advocacy and activism is a recent development.

It is to be noted that although it is no longer valid, the category 'unsound mind' is still used in the Constitution in the following Articles:

Article 102 says that any person who is of unsound mind and stands so declared by a competent court will be disqualified for being chosen as a member of either house of Parliament. Similarly, Article 191 talks about disqualification from Legislative Assembly or Legislative Council of a State on the same ground of unsoundness of mind.

Questions/Discussion

What Rights of Persons with Disabilities does the Indian Constitution recognize?

7.5 Laws on Mental Health in India

7.5.1 Indian Lunacy Act 1912

In 1858, when India was under British Rule, Persons with mental illness were referred to as lunatics and mental illness was called lunacy. The condition of these lunatics was miserable as they were considered dangerous. They were meant to be kept in isolation and segregated from mainstream society. The British introduced a number of legislations like the Lunacy Act (Supreme Courts) Act 1858, the Lunacy (District Courts) Act 1858, the Indian Lunacy Act 1858 (amendments passed in 1886 and 1889) and the Military Lunatic Act 1877.

Under these acts, patients were detained for an indefinite period in poor living conditions, with little chance of recovery or discharge.

Half a century later, in 1912, all the existing legislations were consolidated and the Indian Lunacy Act 1912 was introduced. The focus of this Act was on protecting society from lunatics (defined in the law as a person who is an idiot or a person of unsound mind) and its emphasis was on custodial care in institutions. This law ignored human rights and presumed that persons with mental illness will spend the rest of their lives in custodial institutions. The law focused on the rules for admitting people to institutions and the management of their property subsequent to their admission to hospital. This model of mental health policies was predominantly British. It brought mental hospitals under the charge of Civil Surgeons instead of Inspector General of Prisons as in the earlier Acts. Psychiatrists were appointed for the first time, and supervision of such asylums was handed over to the central government. Over the years the Indian Lunacy Act became redundant and after Independence the Indian Psychiatric Society actively canvassed for a new legislation which was enacted in 1987.

7.5.2 Mental Health Act 1987

Around 1980s, a collective consciousness of civil rights started to seep in. This found expression in the disability sector through disability rights activists as well as disabled persons who started demanding for the Rights of Disabled Persons. It led to the first legislation enacted in this decade, called the Mental Health Act 1987 (MHA 1987). This Act was progressive in comparison to the earlier Indian Lunacy Act. The term 'lunatic' was replaced by, 'mentally ill person'. This Act aimed at amending the law relating to treatment and care of persons with mental illness. It asserts that mentally ill persons have the Right to Maintenance and the Right to Property (if he/she is unable to take care of his property, manager or guardian can be appointed by the Court and the manager or guardian can enter into contract on behalf of mentally ill person). It prohibited the deprivation of human rights of Persons with mental illness and lay down penalties in case of violation of any of the rules and directions contained under the Act.

The MHA 1987 provided the structure of Central and State Mental Health Authorities; establishment and maintenance of psychiatric hospitals and nursing homes with license; admission and detention in psychiatric hospital or nursing home; provisions regarding admission and detention of certain mentally ill persons; inspection, discharge, leave of absence and removal of mentally ill persons; judicial inquisition regarding alleged mentally ill persons possessing property, custody of this person and management of his property; liability to meet cost of maintenance of mentally ill persons detained in psychiatric hospital or nursing home; protection of Human Rights of mentally ill persons etc.

However, an examination of the working of the Mental Health Act, 1987 shows that it had a number of loopholes. Persons with Intellectual Disabilities were excluded from the definition of 'mentally ill persons'. The Act empowered state government to designate any medical officer as a psychiatrist on the basis of knowledge and experience. So it was not necessary to have qualification of M.D. Psychiatry to be appointed as a psychiatrist.

Consequently, the government could misuse this power. The Act provided for establishment of Central and State Mental Health Authority, but since there was no prescribed time limit, many states did not establish these for a long time.

The Mental Health Act 1987 was a welcome step from the earlier Lunacy Act but yet the legislation was welfare based and not Rights based. Nonetheless, it did change the terminology being used legally for persons with mental illness. The Act became the starting point for disabled persons to fight for their rights and later get India's another progressive law, namely The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

7.5.3 National Mental Healthcare Act 2017

On March 27, 2017, Lok Sabha passed the Mental Healthcare Act 2017¹²⁰. The new act builds upon the Mental Health Policy 2014¹²¹. It is the first Human Rights based legislation for Persons with mental illness in India, and marks a paradigm shift from negative and excluding discourse to a more positive and inclusive one. The language and terminology used in the Act has shifted from derogatory to one of respect. For example, the definition of "mental illness" has changed. In Section 2 of the Act it is now referred to as a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs.

This Act repeals the Mental Health Act 1987 which had been widely criticized for not recognizing the rights of Persons with mental illness.

Taking the notion of Human Rights to a higher level, Section 5 of the Mental Health Care Act 2017 empowers persons with mental illness to give an Advance Directive in writing towards the way she/he wants to be treated for a possible episode of mental illness in the future. The person can nominate a representative to operationalize her/his wishes. This directive has to be vetted by a medical practitioner. The Advance Directive can prove to be a safeguard against abuse for Persons with mental illness because they are highly prone to abuse and violence at the hands of their caregivers. In the past there have been multiple instances where they have been forced to live in a particular setting and go through inhumane treatments like electroconvulsive therapy.

In the Mental Health Care Act 2017, Section 18 says that every person will have the right to access mental healthcare services. Such services should be of good quality, convenient, affordable, and accessible. Persons with mental illness have the right to access free legal services and their medical records. They also have the right to complain in the event of deficiencies in provisions.

¹²⁰The Act can be accessed at https://www.wbhealth.gov.in/mental_health/Acts_Rules/MHA_1987.pdf

¹²¹ The document for this policy can be found at <https://www.nhp.gov.in/sites/default/files/pdf/national%20mental%20health%20policy%20of%20india%202014.pdf>

Furthermore, the Mental Health Care Act 2017 replaces the term Psychiatric Hospital or Psychiatric Nursing Home given in MHA 1987 by Mental Health Establishments.¹²²

Section 20 of this Act assures that Persons with Disabilities have the Right to Live with Dignity. It states that there must be adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular women's personal hygiene must be adequately addressed by providing access to items that may be required during menstruation etc.

The one key highlight of this Act is Section 115, which decriminalizes suicide attempt by a Person with mental illness. It also imposes on the government a duty to rehabilitate such person to ensure that there is no recurrence of attempt to suicide. Furthermore, the Act completely prohibits any kind of electroconvulsive therapy (ECT) therapy for Persons with mental illness, without the use of muscle relaxants and anesthesia. Furthermore, ECT therapy cannot be performed for minors.

Section 100 of the Act assures the protection of any Person with mental illness who is being ill-treated or neglected. In such case the concerned police officer in charge of a police station should report to the Magistrate. Also, in a scenario where Person with mental illness is found wandering, he/she should be taken in protection by a police officer on duty. He/she should be subject to examination by a medical officer, and based on such examination will be either admitted to a mental health establishment or be taken to her residence or to an establishment for homeless persons.

Questions/Discussion

Why has there been a transformation in the legal discourse on mental health since the 1980s?

What are the major differences in the Mental Health Act 1987 and the Mental Healthcare Act 2017?

7.6 Disability Laws in India

7.6.1 The Rehabilitation Council of India Act 1992

The Rehabilitation Council of India Act 1992¹²³ was brought in to ensure quality control in the work of rehabilitation professionals. It was based on models existing for professionals in medical and legal professions. It standardized admission of professionals in this sector and strove to bring in uniformity. For example, in Section 11 of this Act, only those rehabilitation professionals who possess degrees from universities and institutions recognized by the Council are entitled to registration with the council. Persons not registered with the Council are barred

¹²² Section 59(p) of Mental Health Care Act 2017

¹²³The Act can be accessed at found at <https://indiacode.nic.in/bitstream/123456789/1977/1/199234.pdf>

from functioning as rehabilitation professionals. The statute, in fact, provides penal sanctions against all those who infringe this requirement of the law.

According to Section 15 the Act, the Council shall appoint such number of Inspectors as it may deem necessary to inspect any university or institution where education for practicing as rehabilitation professionals is given, or to attend an examination held by any such university or institution. In Section 17, if upon report by the Inspector or the Visitor it appears to the Council that the courses of study and examination to be undergone in any university or institution, or that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such university or institution, do not conform to the standards prescribed by the Council, the Council can withdraw the recognition.

In Section 29 the powers of Rehabilitation Council are mentioned which include making regulations which serve the purpose of this Act. It can govern the standards of staff, equipment, accommodation, training and other facilities for study or training of rehabilitation professionals; and the standards of professional conduct and etiquette and code of ethics to be observed by rehabilitation professionals.

The Schedule in the Act lists recognized rehabilitation qualifications, universities and institutions in India.

7.6.2 The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD 1995 Act)¹²⁴ was enacted to give effect to the 'Proclamation of the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region'. The Proclamation was issued in a meeting of the Economic and Social Commission for Asia and the Pacific Region in December 1992 at Beijing, to launch the 'Asian and Pacific Decade of Disabled Persons 1993–2002'. It was a significant step towards equal opportunities and protection of the Rights for people with disabilities. The legislation is a landmark as it was the country's first comprehensive Act for disabled persons. However, the Act had a largely welfare approach and focused on prevention and early detection of disabilities, education and employment of the Persons with Disabilities. The Act listed the following conditions as disabilities -

- a. Blindness
- b. Low vision
- c. Leprosy-cured
- d. Hearing Impairment
- e. Loco-motor disability
- f. Mental Retardation
- g. Mental Illness

¹²⁴The Act can be accessed at <http://niepmd.tn.nic.in/documents/PWD%20ACT.pdf>

It talks about preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development, creation of barrier-free environment, rehabilitation of persons with disability, unemployment allowance for the disabled, special insurance scheme for disabled employees, and establishment of homes for persons with severe disability etc.

Section 25 focused on prevention of disabilities amongst children through annual screening for impairments, taking measures for pre-natal, perinatal and post-natal health of mother and child, undertake surveys, investigations and research concerning the cause of occurrence of disabilities, training of healthcare staff in public health centres, and educating public through the preschools, schools, primary health centres, village level workers and anganwadi workers.

Section 32 of the Act gave provisions for Employment of disabled persons where at least three percent of the posts in all government establishments should be reserved for them. One percent each were to be reserved for each of the impairments namely blindness or low vision, hearing impairment, and loco-motor impairment or cerebral palsy. Section 38 direct governments and local authorities to formulate schemes for ensuring employment of persons with disabilities, and such schemes may provide for training; health and safety measures, and creation of an accessible environment for disabled persons. In Section 39 all government educational institutions and other educational institutions receiving aid from the government, were required to reserve not less than three per cent seats for persons with disabilities.

The Act provided social security in the form of grants and financial assistance to non-governmental organizations working for disabled persons. Section 68 talks about payment of an unemployment allowance for disabled persons in case they are registered with Special Employment exchange for more than two years, and could not be placed in any gainful occupation.

Appointment of Chief Commissioner for persons with disabilities would be made under Section 57. The Central Government would facilitate the appointment. A person shall not be qualified for appointment as the Chief Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation. The Chief Commissioner shall coordinate the work of the Commissioners; monitor the utilization of funds disbursed by the Central Government; take steps to safeguard the rights and facilities made available to persons with disabilities. Section 60 deals with the appointment of Commissioners for persons with disabilities. The Commissioner shall coordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities; monitor the utilization of funds disbursed by the State Government: take steps to safeguard the rights and facilities made available to persons with disabilities.

Section 69 provides for punishment for fraudulently availing any benefit meant for persons with disabilities. Whoever fraudulently avails or attempts to avail any benefit meant for persons with disabilities, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to twenty thousand rupees or with both.

The number of disabilities covered in this Act was far less than the kinds of impairments individuals have in the country at any given time. Also, there is no specific reference to Rights of Women with Disabilities, in the Act.

7.6.3 National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act was passed by the Parliament in December 1999. One objective of the Act is to enable persons with autism¹²⁵, cerebral palsy¹²⁶, mental retardation¹²⁷ and multiple disabilities¹²⁸ to lead independent lives. This could be achieved by providing community rehabilitation support to the person and their family in times of crisis situations. For example, if an individual with Cerebral Palsy does not have anyone to look after him/her, then this Act becomes useful as it talks about guardianship. The idea is to not to push people out of society but to create an inclusive structure; and secondly, to provide support to disabled persons who do not have family support: In such a scenario it becomes the responsibility of the State to provide guardianship or look after the person with disability; thirdly, in cases where parents want to willingly appoint a guardian for the disabled person to save her/him from any abuse or exploitation, and to take care of financial matters related to the disabled person post the death of the parents. This Act provides for the procedures to be followed to appoint a legal guardian for a disabled person. For this purpose, in Section 3 of this Act, the Government has set up a National Trust under this Act, which includes provisions like strengthening facilities to support people within their own families, within society, and to extend support to parents and voluntary organizations, during a period of crisis. The functions of the Trust include setting up of residential hostels and homes, foster care, day services, counseling centers, and extend support to registered organizations which work for disabled persons.

Section 12 deals with procedure for registration. Any association of persons with disability, or any association of parents of persons with disability or a voluntary organization may make an application for registration to the Board. Upon receipt of such application the Board shall either grant registration to the applicant or reject such application for reasons to be recorded in writing, providing the reasons of rejection, and the applicant may again make an application for registration after removing defects, if any, in its previous application.

¹²⁵ 'Autism' means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behaviours.

¹²⁶ 'Cerebral Palsy' means a group of non-progressive conditions of a person characterized by abnormal motor control posture resulting from brain injuries occurring in the pre-natal, peri-natal or infant period of development.

¹²⁷ 'Mental Retardation' means a condition of arrested or incomplete development of mind, which is specially characterized by sub-normality of intelligence.

¹²⁸ 'Multiple disabilities' means a combination of two or more disabilities (blindness, low vision, leprosy cured, loco-motor impairment, hearing impairment, mental retardation and mental illness) defined in Persons with Disabilities Act 1995^{on page 2}

Section 13 deals with the constitution of local level committees; a local level committee should consist of an officer of the civil service of the Union or of the State, not below the rank of a District Magistrate or a District Commissioner of a district; a representative of a registered organization; and a person with disability (having any kind of disability as defined in clause (1) of section 2 of the Persons with Disabilities Act, 1995).

Section 14 talks about the appointment for guardianship: a parent of a person with disability or his relative or a registered organization may make an application to the local level committee for appointment of any person of his/their choice to act as a guardian of the persons with disability. The local level committee shall consider whether the person with disability needs a guardian. The duties of a guardian are specified in Section 15 of the Act, in which every person appointed as a guardian of a person with disability has the duty to take care of such person of disability and his property. In Section 16, it is given that every person appointed as a guardian shall deliver to the authority which appointed him, an inventory of immovable property belonging to the person with disability and all assets and other movable property received on behalf of the person with disability, together with a statement of all claims due to and all debts and liabilities due by such person with disability.

Section 17 deals with removal of guardian; if the parent or a relative of a person with disability or a registered organization finds that the guardian is abusing or neglecting a person with disability; or misappropriating or neglecting the property, he/ she may in accordance with the prescribed procedure apply to the committee for the removal of such guardian. Upon receiving such application the committee may, if it is satisfied, remove such guardian and appoint a new guardian in his/ her place. Any person removed shall be bound to deliver the charge of all property of the person with disability, to the new guardian.

Under Section 22 there shall be constituted a fund to be called the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Fund. All the funds received from the Central Government, grants, gifts, donations, benefactions, bequests or transfers; all moneys received by the Trust in any other manner or from any other source.

In 2001, the National Trust Act Regulations¹²⁹, called the Board of the Trust Regulations, 2001, were released. These rules were set to facilitate the provisions mentioned in the National Trust Act.

7.6.4 National Policy for Persons with Disabilities, 2006

The National Policy for Persons with Disabilities focuses primarily on the rehabilitation aspect of disabled persons. This rehabilitation can be physical, educational and economic in nature. The policy specifically emphasizes upon rehabilitation of women and children with disabilities, barrier free environment, social security and research etc.

¹²⁹The document of National Trust Act Regulations can be found at http://disabilityaffairs.gov.in/upload/uploadfiles/files/National_Trust_act-englsih.pdf

Section 9 deals with prevention of disabilities. It calls for programmes for prevention of diseases which result in disability, and the measures for prevention of disabilities during the period of pregnancy and thereafter, to be intensified and their coverage expanded.

Section 10 of the Policy elaborates on the kinds of rehabilitation measures that should be undertaken for prevention of disability in children, increasing awareness on disability, and promotion of better standard of living for PWD. These measures can be classified into three distinct groups:

- Physical rehabilitation (early detection and intervention, counselling & medical interventions and provision of aids & appliances and the development of rehabilitation professionals);
- Educational rehabilitation (compulsory education, vocational training, community based rehabilitation, assistive devices, learning aids and tools, support services);
- Economic rehabilitation (employment reservations, promotion of self-employment through vocational education, providing incentives, tax concessions etc).

The National Policy for Persons with Disabilities recognizes that Women with disabilities require protection against exploitation and abuse and specific rehabilitation measures need to be taken up for them. Section 29 talks about provision of special programmes for education, employment and other rehabilitation services, to women with disabilities. Special educational and vocation training facilities will be set up. Programmes will be undertaken to rehabilitate abandoned disabled women/ girls by encouraging their adoption in families, support to house them, and impart training for gainful employment skills. The Government will encourage projects where representation of women with disabilities is ensured at least to the extent of twenty five percent of total beneficiaries.

The policy talks about barrier-free environment for disabled persons, simple and transparent processes for issuance of disability certificates, comprehensive social security schemes for disabled persons, apart from the unemployment allowance as mentioned in the PWD Act 1995

The Chief Commissioner for Disabilities at Central level and State Commissioners at the State level (as defined Section 74 of the PWD Act 1995) shall play key roles in implementation of National Policy, apart from their statutory responsibilities.

7.6.5 Rights of Persons with Disabilities Act 2016 (RPWD Act 2016)

The RPWD Act 2016¹³⁰ is an outcome of a tedious and long struggle for the Rights of Persons with Disabilities. Of course, it has its flaws, but the Act is considered to be comprehensive. It builds upon PWD Act 1995 and addresses the issues which were not covered therein.

¹³⁰The document for Rights of Persons with Disabilities Act 2016 can be found at <http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/RPWD%20ACT%202016.pdf>

The key highlight of the 2016 Act is that the list of disabilities has expanded from 7 in PWD Act 1995, to 21 conditions. It covers the following disabilities:

1. Blindness
2. Low-vision
3. Leprosy Cured Persons
4. Hearing Impairment (deaf and hard of hearing)
5. Locomotor Disability
6. Dwarfism
7. Intellectual Disability
8. Mental Illness
9. Autism Spectrum Disorder
10. Cerebral Palsy
11. Muscular Dystrophy
12. Chronic Neurological conditions
13. Specific Learning Disabilities
14. Multiple Sclerosis
15. Speech and Language disability
16. Thalassemia
17. Hemophilia
18. Sickle Cell disease
19. Multiple Disabilities including deaf-blindness
20. Acid Attack victim
21. Parkinson's disease

Section 4 (1) of the Rights of Persons with Disabilities Act 2016 talks about the responsibility of the Government to ensure that Women and Children with Disabilities enjoy their rights equally with others.

Section 6 mentions the protection of Persons with Disabilities from cruelty, inhuman, and degrading treatments.

Section 7 focuses on protecting PWDs from Violence, abuse and exploitation. It gives clear directions on how a victim can be rescued and provided remedy to her/his situation. Section 7 (1) (a) directs the government to take cognizance of incidents of abuse, violence and exploitation, and provide legal remedies available against such incidents; (b) take steps for avoiding such incidents and prescribe the procedure for its reporting; (c) take steps to rescue, protect and rehabilitate victims of such incidents; and (d) create awareness and make available information among the public.

Section 7 (2) gives responsibility to any organization or person who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be, committed against any person with disability, may give information about it to the Executive Magistrate within the local limits of whose jurisdiction such incidents occur.

Section 7 (3) states that the Executive Magistrate, on receipt of such information, shall take immediate steps to stop or prevent its occurrence, as the case may be, or pass such order as he deems fit for the protection of such person with disability including an order:

- (a) to rescue the victim of such act, authorizing the police or any organization working for persons with disabilities to provide for the safe custody or rehabilitation of such person, or both, as the case may be;
- (b) to provide protective custody to the person with disability, if such person so desires;
- (c) to provide maintenance to such person with disability.

Section 7 (4) talks about legal rights of a victim, and the role of law enforcement agencies. It says that any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any person with disability shall inform the aggrieved person of:

- (a) his or her right to apply for protection under section 7 (2), and the particulars of the Executive Magistrate having jurisdiction to provide assistance;
- (b) the particulars of the nearest organization or institution working for the rehabilitation of persons with disabilities;
- (c) the right to free legal aid;
- (d) the right to file a complaint under the provisions of this Act or any other law dealing with such offence: provided that nothing in this section shall be construed in any manner as to relieve the police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

Section 7 (5) says if the Executive Magistrate finds that the alleged act or behavior constitutes an offence under the Indian Penal Code, or under any other law for the time being in force, he may forward the complaint to that effect to the Judicial or Metropolitan Magistrate, as the case may be, having jurisdiction in the matter.

Section 10 of the Act deals with the Reproductive Rights of persons with disabilities. It ensures that PWDs should have access to appropriate information regarding reproductive and family planning. There have been many instances where hysterectomy has been conducted on Women with Disabilities without their consent, particularly on girls and women with Intellectual Disabilities because of their assumed lack of comprehension of hygiene standards or chances of getting raped which may lead to pregnancy (Hans, 2015). No person with disability shall be subject to any medical procedure which leads to infertility without his or her free and informed consent.

Section 13 (1) says that persons with disabilities have right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit. 13 (5) also restrains any person providing support to the person with disability from exercising undue influence, and respect the autonomy, dignity and privacy of disabled person.

Section 24 talks about social security for WWD in order to support them for livelihood and for upbringing of their children;

Section 25 (a) of the Act ensures free healthcare in rural areas for WWDs if they belong to lower income backgrounds. It also directs government to make schemes or programmes to promote healthcare, especially for providing sexual and reproductive healthcare especially for women with disability.

Section 37 A gives priority to women with benchmark¹³¹ disabilities in reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, and five percent reservations in all poverty alleviation and various developmental schemes.

38 (1) states that any person with benchmark disability, who considers himself to be in need of high support, or any person or organization on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

Punishment for Offences of Atrocities

Section 92 is important as it gives guidelines on counteracting instances of violence and abuse against WWDs. It says that whoever (a) intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view; (b) assaults or uses force on any person with disability with intent to outrage the modesty of a woman with disability; (c) having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to him or her; (d) being in a position to dominate the will of a child or woman with disability, uses that position to exploit her sexually; (e) voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability; (f) performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent (except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability), shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

The Bill provides for access to inclusive education, vocational training, and self-employment of disabled persons without discrimination. Buildings, campuses, and various facilities are to be made accessible to PWDs and their special needs are to be addressed. Necessary schemes and programs to safeguard and promote PWDs for living in the community are to be launched by the Government. Appropriate healthcare measures, insurance schemes, and rehabilitation programs for PWDs are also to be undertaken. All Government institutions of higher education and those getting aid from the Government are required to reserve at least

¹³¹Section 2 of RPWD Act 2016 - 'person with benchmark disability' means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms, and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

5% seats for persons with benchmark disabilities. This has increased from 3% given in PWD Act 1995. Four percent reservation for persons with benchmark disabilities is to be provided in posts of all Government establishments with differential quotas for different forms of disabilities. The Government has also tried to incentivize the induction of Persons with Disabilities in the private sector workforce. Consequently, incentives to employers in private sector are to be given if they provide 5% reservation for persons with benchmark disability. Special employment exchanges for the PWD are to be set up. Awareness and sensitization programs are to be conducted and promoted regarding the PWD. Standards of accessibility in physical environment, different modes of transport, public buildings and areas are to be laid down, which are to be observed mandatorily and a 5-year time limit is provided to make existing public buildings accessible. Access to information and communication technology is to be ensured. National Funds for PWD and State Funds for PWD are to be constituted at the central and state levels respectively by the appropriate Governments. Contraventions of the provisions of the Act have been made punishable by a fine of an amount up to ten thousand for first contravention and fifty thousand extendable up to five lakhs for subsequent contraventions. Fraudulently availing of the benefits meant for PWD has also been made punishable.

Questions/Discussion

How did the PWD Act of 1995 transform thinking on disability in India?

What are the differences that you can point out between PWD Act 1995 and RPWD Act 2016?

Conclusion

Over the last three decades, a strong legal regime has been established in India around disability. This legal regime is in compliance with international standards prescribed by the United Nations. Laws like the RPWD 2016 and Mental Health Care Act 2017 have the potential to drastically transform the lives of PWDs. Unfortunately there is a severe lack of awareness in the population particularly amongst the main stakeholders i.e. PWDs and their families. Secondly, the implementation is severely compromised by the absence of adequate financial and infrastructural resources. Until these two factors are adequately addressed the laws are more in the nature of paper tigers.

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8. Navigating the Legal Justice System

Vidushi Kothari¹³² and Maitreya Shah¹³³

Objectives

This module will help the reader to understand:

- The legal rights and remedies available to survivors with disabilities of abuse, violence and exploitation;
- The role and basic functioning of institutions such as police, courts, and Executive Magistrates, that survivors of crime come into contact with, and how to best locate and approach them;
- The various legal processes in navigating the legal justice system and how to avoid the labyrinth of bureaucracy.

8.1 Introduction

This module is written for women with disabilities who have survived violence. Additionally, it is designed to serve as a resource to authorities who play a role assisting such victims. These authorities include the police, courts, executive magistrates, hospitals and NGOs. All stakeholders must be made aware of their legal rights and obligations in order that these may transpire into reality. It is important for victims to know the manner and stage at which authorities such as police must be approached. On the other hand, the police and other authorities need to be sensitized and educated on the procedures to be followed in case of violence against women with disabilities.

A survivor of crime with a disability must know her rights and the full range of legal remedies she has to choose from, so that she may choose most appropriately the one that best meets her needs. Furthermore, she must know what abuse, violence or exploitation she has survived, where and how it is prohibited and punishable under law; and how to embark upon the most appropriate course of action to prevent, report, and seek justice thereafter.

8.2 Factors to consider before going the legal way

- All rights and remedies available to able-bodied women apply to women with disabilities. However, there is legal provision for some special procedures, accommodations and some benefits, put in place to facilitate access to justice for women with disabilities. In many such cases, there are enhanced punishments for offenders and compensations for survivors.

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- Attitudinal barriers and lack of training among authorities such as police and courts result in many stakeholders not giving women with disabilities the accommodations they are entitled to. In such cases, it is important for those who do have knowledge of processes to spread awareness at each step of navigating the law. Legal aid is technically free for persons with disabilities. However, the quality may be of a lower standard. In theory, legal remedies are free. In practice, they entail costs and often take a long time. Although legal remedies against violence in India are generally not preventive, they can prevent the escalation of violence. For example, restraining orders (order from executive magistrates or courts to prevent wrongdoers from contacting or approaching the victim) are currently rare and under-utilized in Indian law. There are however expedient remedies for protective custody, etc. It takes a courageous and persistent spirit and much perseverance to push the machinery in place. Knowledge of rights, remedies and knowledge of the legal system can make women with disabilities less vulnerable to violence, and can make it easier for them to avail remedies. On the other hand, many legal rights exist on paper but there is seldom a legal machinery to bring them to reality.

State and Central schemes may help women in getting compensation in the aftermath of suffering a crime such as rape and/or violence, including an acid attack. Centrally, the Nirbhaya Fund has been put in place for rape victims after the 2013 Amendment. At the State level, specific schemes are made in this regard¹³⁴.

Under Section 125 of Criminal Procedure Code, disabled¹³⁵women of all ages can seek maintenance from their parents

A woman below 18 years would be considered a minor, and offences involving sexual acts would be covered under Protection of Children from Sexual Offences Act (POCSO). It is important to note that any sexual activity with a minor is a crime, because a minor (even if willing to participate in sexual activity) cannot give consent.¹³⁶

¹³⁴ More information available at <http://uphome.gov.in/writereaddata/Portal/Images/CVCF.PDF>

135 Order for maintenance of wives, children and parents

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.....

¹³⁶ More information available at Disability specific information of the woman must be disclosed and recorded from the start (typically from the point of filing an FIR/complaint). It must be noted that the police cannot demand a disability certificate in order to include the fact of disability in the FIR <https://www.sa-hr.org/single-post/2018/02/25/GenderJustCourts---Sexual-intercourse-with-a-minor-girl-is-rape-Independent-Thought-vs-Union-of-India>

Disability specific information of the woman must be disclosed and recorded from the start (typically from the point of filing an FIR/complaint). It must be noted that the police cannot demand a disability certificate in order to include the fact of disability in the FIR¹³⁷. At a later stage, when applying for compensation and/or free legal aid, the victim would have to present a disability certificate. Therefore, in order to navigate the legal system, it is extremely useful for the victim to have a disability certificate issued through a government hospital. For the purpose of filing FIR and getting access to criminal justice, the victim's disability need not be a permanent one, and need not immediately require documentation for the same.

Questions/Discussion

What are the factors that need to be taken into consideration before approaching the legal system?

8.3 Who should be contacted?

If a woman with disability suffers violence, she can approach the following persons/institutions:

8.3.1. Police: The police is typically the first point of contact in cases of crime. It is the police's responsibility to inform the victim about her remedies upon being approached by the victim. What to expect when the police arrives?

- The victim need not go to the police station. For victims with disabilities, upon calling 100, the police must necessarily come to the residence or place convenient to victim to register the first information report (FIR)¹³⁸.

The police must call in an interpreter or educator where necessary, through Child Welfare Committees, or through NGOs. Child Welfare Committees and/or NGOs would enable access to interpreters. Police stations should prepare contact lists of these resources in advance. The victim may choose to have an interpreter or a special educator of her choice present at all times, instead of one chosen by an investigating officer. Many NGOs run help and support programmes for women with disabilities. These NGOs can be contacted for support. After 2013, the government has started many one-stop crisis centres in different cities. Women with disabilities can approach the nearest crisis centre to seek help in cases of crimes committed.

- The complaint given by a disabled woman must be video-graphed to ensure consistency in what the victim says vs. what interpreter/special educator informs vs.

¹³⁷ More information available in HRW Report on Access to Justice for Women and Girls with Disabilities in India, available at: <https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities>

¹³⁸ More information: The complaint given by a disabled woman must be video-graphed to ensure consistency in what the victim says vs. what interpreter/special educator informs vs. what police records. This video-graphing also ensures that the victim is not made to repeat her statement multiple times over, as such repetition can be difficult and traumatic. Amendment to the Code of Criminal Procedure, 1973 by the Criminal Law Amendment Act, 2009, No. 5 of 2009, (inserting Proviso to (a) 154(1) CrPC).

what police records. This video-graphing also ensures that the victim is not made to repeat her statement multiple times over, as such repetition can be difficult and traumatic¹³⁹.

It is to be noted that deaf women need interpreters, learning-disabled women require special educators. There is a difference between the two. Some may not require either. The police must ascertain correctly the needs of the particular victim.

- The police is vested with the duty to be the one-stop centre for persons with disabilities who encounter a crime. It is their duty, upon finding out about such a crime, to not only file an FIR but guide the disabled victim in the legal process. Upon coming into contact with a disabled survivor, it is the Police's duty to brief her thoroughly on her rights and the way forward: including the legal provisions of the Rights of Persons with Disabilities Act (RPWD), specifically the crimes committed against persons with disabilities that are punishable by five years under Section 92; the victim's right to free legal aid; details on who the executive magistrate/concerned authority is that the victim needs to approach; NGOs that could assist the victim. This protocol that the police must follow is clearly laid out in Section 7 of the RPWD Act. It is also pertinent to note that no disability certificate should be required to be produced at this stage¹⁴⁰.
- The police must keep handy resources for NGOs and interpreters who can be made available in cases of emergency, either in person or through video conferencing.
- The police must not demand that the disabled woman seek a female officer, or a different police station. However, they may extend the option and escort the disabled woman to a female officer only if she chooses to ask for one. The victim has a right to ask to speak to a female police officer.
- In instances where crime takes place while travelling in a train/ flight/ bus/ in other such circumstances, the police or support structures are to be contacted. For example, the Railways have the Railway Police Force (RPF). RPF can be contacted on 182¹⁴¹. There is a special helpline in railways for persons with disabilities, which is (044-25354457). For buses and cabs and airlines – whether private or public – the appropriate authority that owns/runs manages such transportation must be contacted. **However it must be noted that, when crime happens, police should be called first and foremost before any helpline.** Helplines/helpdesk/bus conductors may come of use where the traveller needs any form of support.

¹³⁹ More information at Amendment to the Code of Criminal Procedure, 1973 by The Criminal Law Amendment Act, 2013, No. 13 of 23 (inserting proviso (5A)(a) to Section 164(5) CrPC).

¹⁴⁰ See Ibid

¹⁴¹ More information available at If a crime of violence has left the patient unable to go to the police, the patient must first visit the emergency room of a hospital (be it public or private) for first aid, or a community centre. Injured patients get free of cost treatment in emergency. Primary treatment is a right in emergency room. <https://erail.in/info/complaint-rpf-grp/1002>

8.3.2 Hospitals: In cases of violence that has led to injury (especially if injury is grave), hospitals must be contacted.

Victims may choose to go to a hospital or to police first, whichever is nearer and more convenient to them. If they choose to go to the police first, the police is obligated to take them to the nearest hospital. They cannot be turned away from an emergency ward or community health centre because the case is a police case.

- If a crime of violence has left the patient unable to go to the police, the patient must first visit the emergency room of a hospital (be it public or private) for first aid, or a community centre. Injured patients get free of cost treatment in emergency. Primary treatment is a right in emergency room¹⁴².

Since the patient cannot be expected to know how grave her injury is, she must not be turned away from the hospital and asked to go to the police first. The victim or her interpreter or the police must request the doctor to file a medico-legal complaint (MLC). It is important that the police ensure this is done.

Doctor must not rely on police statements to file the MLC. They must ask the patient directly. Where the patient is deaf, doctors may rely on interpreter or text message or writing. Where the victim has multiple disabilities, a competent interpreter may be called in. The doctors need to put down the alleged history of rape in their note sheet. Doctors cannot write down the name of the accused in the MLC.

Doctors examine the patient. In cases where rape may have been committed but it is not clear, it is the doctor's responsibility to check for evidence. The examining doctor must be a female gynaecologist. If a female gynaecologist is not available, the victim may ask to be taken to one if she chooses.

- A female police officer may be called to accompany the victim. The body of the victim is scanned by the gynaecologist for scratches, injury, vagina, nail marks, bites etc. If found unconscious and victim can't speak, it is the doctor's duty to check for sexual violence. Though the victim is allowed to have an interpreter present throughout the examination, videography is not allowed as per Medical Council of India ethics rules. The victim is asked if she is married or unmarried. This is a particularly regressive part of the protocol. A rape kit is to be used which contains HIV test, pregnancy test, swab culture from vagina. These are later sent to a lab.
- The victim must be informed by the doctor about her right to receive counselling after suffering violence. The OPD is contacted for an appointment where the victim needs/requests counselling.
- Treatment papers may be handed over to the patient. However, the MLC paper is not handed over to patient. Three copies of the MLC are made. One is handed to police,

¹⁴² HRW Report on Access to Justice for Women and Girls with Disabilities in India, available at: <https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities>

the other two remain in the hospital. The Investigating officer (police) collects the MLC from the local police station and carries out further procedural requirement. MLC need not be written in the presence of a police officer.

- It does not matter whether the hospital is a government one or a private one. Both types are obligated to follow procedure by ensuring investigating officers are called and medico-legal cases are reported as per procedure. Community Health Centres are small sized hospitals. They can record MLC and intimate police. If gynaecologist is not available, they will have to arrange referral to a bigger centre and escort the patient there. In other words, it is the emergency room doctor's job to ensure patients are sent to appropriate hospitals from community health centres and primary health centres where gynaecologists may not be present. If the injury is grave, the doctor must accompany the patient. If injury is not grave, paramedical staff can take the patient.

8.3.3 Child Welfare Committees: Under the Juvenile Justice Act, every district now has a CWC. They can be contacted for any issue concerning children, and in many cases for interpreters.

8.3.4 Internal Complaints Committees (ICC) and Local Complaint Committees (LCC)¹⁴³ in cases of sexual harassment at the workplace: This is for workplaces with over ten employees. The definition of a workplace here is broad, extending outside of a specific premise and including anywhere the job requires one to go. It includes domestic spaces. Furthermore, if the organization has fewer than ten employees, the victim may seek redress at LCCs (Local complaint committees) set up by local area administration

Questions/Discussion

If a woman with disability has been raped by a stranger, what can she do to get justice? Which other people and institutions have an obligation to support her, and what should they do?

8.4. Rights Available to Women with Disabilities who are Survivors of Violence

Every woman with disability facing any kind of violence has the following basic rights available under the law:

Right to file a First Information Report (FIR)

If a woman with disability is a victim of crimes like rape, assault, abuse, sexual harassment, hurt etc., she has the right to file a complaint in the form of an FIR with the police. Under the Code of Criminal Procedure (CRPC), Section 154, if a woman with disability suffers from sexual abuse or rape, the police have to register the FIR in a convenient place like home

¹⁴³ More information available at <https://wcd.nic.in/act/sexual-harassment-women-workplace-preventionprohibition-and-redressal-act-2013>

of the woman. The victim must make sure she receives a copy of the FIR (in accessible format where necessary) from the police. It is useful to mention the nature of her disability as it would make the right to accommodations etc easier to avail, going forward.

Right to be examined by female police officer

Under the law, complaint of sexual abuse of a woman has to be registered in presence of a female police official. The victim may if she chooses demand that she speak with/report her complaint to a female police officer.¹⁴⁴

Right to get a copy of the FIR

Every person registering a FIR has right to get the copy of it from the police. This copy stays as a proof of complaint. It may be demanded in a special format where necessary.

Right to have a special educator for complaint

A woman with disability facing sexual abuse or rape etc. has a right to demand assistance of a special educator, sign language interpreter, braille teacher etc. at the time of registering complaint or FIR. The police has an obligation to call such an expert for recording of the complaint. Under the law, the police has to keep a list of such special educators or sign language interpreters in the particular area.

Right to get the complaint video-graphed

Section 119 A of Criminal Law Amendment Act imposes a duty on the police to video-graph the entire process of registering of complaint, recording of statement etc. Hence, a woman with disability explaining the crime committed with her is to be video-recorded¹⁴⁵.

Right not to repeat the statement

Under section 164 of the CRPC, the woman with disability who has faced sexual abuse need not repeat her statement during cross-examination.

Right to complain in case of non-filing of FIR

If a police officer refuses to register the FIR of a woman with disability, a complaint can be made to the Superintendent of Police (SP) about the same. If still the complaint is not registered, the woman can complain to the district magistrate who would¹⁴⁶ order the police to register the complaint. If the complaint is still not registered, a writ petition can be filed before

¹⁴⁴ Ibid.; Delhi Commission for Women v. Delhi Police, Del HC, W.P. (CRL) 696/2008, April 23, 2009.

¹⁴⁵ For more information, see section 119A of the Criminal Law Amendment Act 2013

¹⁴⁶ For more information see section 119A of the Criminal Law Amendment Act 2013

the High Court. According to section 166A of the CRPC, if a police official fails to register FIR for the listed crimes under the law, he/ she can be punished for at least 6 months and up to 2 years in jail, and fined.

Right to get proper medical examination¹⁴⁷

Hospitals and other medical centers have an obligation to follow the Ministry of Health and Family Welfare Guidelines in Medico-Legal cases¹⁴⁸, according to which a woman with disability must be provided medical support in the presence of special educators. Special educators have to be called to take consent of the woman before performing medical examination.

Right to refuse the 2-finger test

It is important to note that the 2-finger test has been prohibited under the Ministry of Health and Family Welfare guidelines. No doctor can perform the 2-finger test on a woman victim. In a 2-finger test, doctors insert 2 fingers in the vagina of a woman to know whether the woman is habituated to sex. This is a regressive practice and can lead to much trauma.

Right to free legal aid/legal representation

This is a very important right, granted directly by the Constitution of India. A woman with disability facing any crime has a right to legal representation before the courts. For this, a lawyer can be approached. In case the woman wants to have her case filed free-of-cost, the district legal services authority can be contacted. This authority will help the woman file a case before the appropriate court, free-of-cost.

Right to Maintenance

A woman with a disability can claim maintenance from her parents without any age limit. This maintenance may be granted upon a petition to the judicial magistrate. This maintenance is a monthly payment and the amount may vary depending on the lifestyle/paying capacity of the family.

Right to file a writ in High Courts for violation of fundamental rights:

A woman can go straight to the High Court with a writ petition (filed through a lawyer) if her fundamental right is violated. She need not approach local authorities first. These

¹⁴⁷ For more info see supra note 10

¹⁴⁸ 2014 Guidelines and Protocols for Medico-Legal Care for Victims/Survivors of Sexual Violence issued by India's Ministry of Health and Family Welfare. It is available at <https://mohfw.gov.in/sites/default/files/953522324.pdf>

fundamental rights are enumerated in Chapter III of the Constitution of India¹⁴⁹. An example is equality before the law and equal protection of the law (Article 14).

Questions/Discussion

What are the rights that a woman can claim when approaching the legal system? How are these rights connected with crimes of Sexual Violence?

8.5 Litigation and Legal Process

For women with disabilities, the law has made several provisions to ease the process or litigation. As per the law, which is supported by judgments of the Supreme Court, a woman with disability can identify an accused in the identification parade through¹⁵⁰ alternate means. For a blind woman, the identification of accused can be done through voice also. As noted earlier, the District Legal Services Authority must assist the woman with disability to fight her case in court.

Sexual offenses against women with disabilities are also punishable under the Rights of Persons with Disabilities Act (RPWD Act) 2016. Under this Act, the executive magistrate has powers to receive complaints about the abuse or offenses against a person with disability, and pass orders to stop the same. Hence, a woman with disability facing sexual or other types of abuse or offences can complain to the executive magistrate for stopping of the same¹⁵¹.

In cases of sexual abuse or rape, the woman with disability can also approach the nearest government hospital or private hospital. The hospitals have a duty to provide the woman with basic first aid, and call the police for registration of the complaint.

If the woman is not satisfied with the decision of the lower court, an appeal can be filed before the Sessions Court of the particular district. If the Sessions Court's order is not satisfactory, an appeal can be filed before the High Court of that particular state. After the High Court, a final appeal lies before the Supreme Court.

Questions/Discussion

What are the special rights available to Women with Disabilities who approach the legal system?

How can law enforcement agencies guarantee these special rights to these Women with Disabilities?

149 For more information: Chapter III, Constitution of India; Article 226 and 227, Constitution of India.

¹⁵⁰ For more information: Ritesh Sinha v. State of U.P.

¹⁵¹ For more information: section 7, Rights of Persons with Disabilities Act 2016

8.6 Children with Disabilities

If a child with disability suffers from sexual abuse, the police cannot keep the child in the police station for an entire night. The police have to let the child go after completion of due procedure. The police have also to provide the family of the child with necessary counseling. For the same, the police can call for experts and counselors¹⁵².

Under the POCSO Act, if a child with disability suffers from sexual abuse, the statement of such a child has to be recorded in the presence of a magistrate only¹⁵³.

Questions/Discussion

What are the special rights available to Children with Disabilities who suffer sexual abuse?

8.7 Legal Remedies Available to Complainants

Compensation

For the rehabilitation of victims of sexual offenses, the government has set up ‘women victims’ compensation fund’. In cases where no trial happens because the accused cannot be recognized, the Code of Criminal Procedure has a remedy under section 357A¹⁵⁴. Under this, women with disability can apply for compensation for different schemes applicable to their cases. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or her dependents may make an application to the State or the District Legal Services Authority for award of compensation. On receipt of such an application, the State or the District Legal Services Authority shall, after due enquiry, award adequate compensation by completing the enquiry within two months. The State or the District Legal Services Authority, may order for immediate first-aid facility or medical benefits to be made available free of cost or any other interim relief as the appropriate authority deems fit¹⁵⁵.

When filing an application to the District Legal Services Authority or the State Legal Services Authority, victim of sexual offenses or their dependents must attach copies of FIR, medical report or death certificate, and court orders if applicable. This application can also be made by the Station House Officer (SHO) of the concerned area police station. It can also be filed online on the website of the state legal services authority of the concerned state¹⁵⁶. For

152 For more information: section 24, POCSO Act; POCSO Rules.

153 For more information: section 25, POCSO Act.

154 Under section 357A CRPC - Victim compensation scheme-1 [(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. (2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1). (3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

155 For more information: section 357A, Code of Criminal Procedure 1976

156 For more information: for more info: see supra note 3

Acid Attack survivors, the application for compensation has to be made before the Criminal Injury Compensation Board.

This compensation is decided on the basis of factors like expenditure for medical treatment, legal process, loss of educational opportunity, loss of employment, etc. The factors like time duration of the offense, relationship of the victim and the offender, pregnancy if existed, etc. are also considered.

Punishment

Apart from compensation, under the criminal law, the offender of a particular crime is punished as per the relevant punishment provided under the law. This punishment includes death penalty, imprisonment, fine or both.

Questions/Discussion

What special provisions are available to WWDs when it comes to compensation and punishment of perpetrators?

8.8 Approaching Executive Magistrates, Disability Commissioners, for Remedies

Under the Rights of Persons with Disabilities Act 2016, the following provisions are worth highlighting:

If a person with disability faces any kind of violence, exploitation or abuse, she can approach the Executive Magistrate of the district with a complaint. Immediate steps for relief are to be taken by executive magistrates. The police and/or the collector can be approached to find out who the executive magistrate is¹⁵⁷.

Any organization or individual if aware about such abuse, violence or exploitation against a person with disability can also approach the executive magistrate with the complaint.

The Executive Magistrate has powers to stop such abuse, violence or exploitation, and can also pass orders to punish the guilty. For immediate remedies, the executive magistrate (also known as district collectors) must be approached. Executive magistrates may also award compensation in accordance with State schemes. A petition may be filed for this.

Judicial Magistrates must be approached where relief sought is not immediate in nature. If a person with disability faces discrimination by any establishment (public or private), which may be related to employment, education, social or cultural life etc. on the ground of disability, the same is punishable under the RPWD, 2016 Act.¹⁵⁸ The concerned person can approach the Disability Commissioner of the state or the Chief Commissioner with a complaint.

157 For more information: section 7, Rights of Persons with Disabilities Act 2016

158 For more information: section 3 and 92, Rights of Persons with Disabilities Act 2016

Questions/Discussion

How are the remedies provided by the Disability Commission different from those provided by the routine legal system particularly in the case of Sexual Violence?

8.9 General Advice on Navigating the Legal System

This section provides some general advice for navigating the legal system, for Women with Disabilities.

Situations in which a Woman with Disabilities can typically seek legal help

- i. Various sections of the Indian Penal Code starting from 319 deal with 'hurt'. If any person inflicts any bodily harm, i.e. physical violence causing pain, the same is a crime.
- ii. A woman with disability receiving any physical hurt from any person can complaint for 'hurt'/'grievous hurt'/'others under the Indian Penal Code.
- iii. Upon being attacked with acid, the same is considered a crime under section 326 of the Indian Penal Code.
- iv. Acts like forceful taking of money or property through causing hurt is also a crime under the Indian Penal Code.
- v. Any person putting the life of another in danger is also committing a crime under Section 337 of the IPC.
- vi. If a person forcefully keeps a woman with disability restrained in a place where her movement is restricted by force, the same is a crime under various sections starting from Section 340 of IPC.
- vii. Any act or use of force to outrage the modesty of a woman with disability is also punishable under the law.
- viii. Another important crime is that of sexual harassment, which includes any unwanted physical contact, demand for sexual favour, showing pornography without consent, passing sexual remarks or signs etc. In such cases, the person responsible would be liable for a punishment of up to 3 years in jail or fine, or both.
- ix. Use of force against a woman with disability causing her to be naked is also a crime under the law. For this, the minimum punishment is 3 years in jail.
- x. If a person watches or records a woman with disability engaged in any private act, the same is a crime under section 354 C of IPC. Private act involves the woman in a place like lavatory, where the portions of her body would be exposed.
- xi. Repetitive contacting of a woman or forceful following of her is also punishable under the law.

- xii. Special provisions for rape, gang-rape, and other sexual offenses have been provided in the IPC. Thus, any sexual activity without the woman's consent is a crime under the law.
- xiii. Forcing a disabled woman to have an abortion against her will is an offense.

Procedures that must be followed

- An FIR (First Information Report) is the most important step which puts criminal law into motion. It is illegal for police to refuse to file an FIR.
- The victim must ask her lawyer for a copy of her file to keep all records with herself at all times. This may be shared in alternative format where necessary.
- When a party delays a case, the court may ask that party to pay costs. Costs that are demanded by the court due to delay of a case (by the opposite party) must be paid to the victim. In other words, the victim's lawyer cannot pocket these costs and/or any part of victims' compensation, maintenance etc. Any agreement to such effect between lawyer and victim is illegal.
- One must have a healthy balance of trust in and suspicion of authorities, Do not completely trust a single person/authority completely and beyond reason. Be it police, your own lawyer, a doctor, etc. Some individuals may be flawed and need to be checked. But not all are ill-intentioned.
- A good strategy is to approach, wherever possible, the mainstream remedy and structure for access to justice using the aid of special procedure provided for under the Criminal Procedure Code, Rights to Persons with Disabilities Act 2016, POCSO Act, etc. For example, it is better to approach as your first point magistrates/courts/police rather than Disability Commissioners demanding that they provide accommodations. Disability Commissioners do not have the powers, wherewithal and machinery in place, and going through them for access to justice might be another layer of process delaying the matter. Their orders however may carry some weight by virtue of them being an authority as proof/evidence and might convince certain parties to comply.

Questions/Discussion

Why is the FIR the most important step in initiating the legal process?

Conclusion

Despite many provisions in Indian law, we lack a robust machinery to implement the rights that we have on paper. However, a cogent understanding of the current systems and structures in place and pro-active seeking of remedies and redress may lead to positive outcomes for victims with disabilities.

Despite legal provisions, there remain severe information deficits among stakeholders. Therefore, each stakeholder must constantly engage in educating, negotiating, and spreading

awareness about disability and the law. The law cannot solve problems in a vacuum without strong institutions, social movements, and a social consensus. Appropriate systems, structures and institutions must be built by reading books, writing letters, arming ourselves with knowledge, collaboration, knowledge-sharing and demanding accountability while using legal remedies and recourse.

Hypotheticals

Question 1:

Match the problem with the resource/remedies/process with the competent authorities/legal provisions

- i. Kajol, a deaf woman, does not have a job and does not have access to money. Her family does not give her money or pay for her expenses. She needs money to lead a dignified life.
- ii. Jhupi, a woman with cerebral palsy was raped. She has reported her case to the police. She wants monetary relief.
- iii. Romi, a wheelchair user, was told by a bus conductor that she was not allowed to use the bus on account of her disability. She was forcibly de-boarded from the bus by the authorities. She has been humiliated and prevented from using the bus.

1. Maintenance
 2. Compensation
 3. Writ upon violation of fundamental right and/or order against discrimination by Corporate/the State
-
- A. Judicial magistrate, Cr.P.C S. 125
 - B. Executive Magistrate (for order), DSLA, or Criminal Injuries Compensation Board, RPWD Act S.7, S. 86, S. 88
 - C. High Court, Chapter III and A. 227 Constitution of India and/or Disability Commissioner

Answer: i1A; ii2B; iii3C

Question 2:

Leela is a disabled woman in her forties. She is being abused in her home. She wants to move away until she can rehabilitate herself, but does not know which authority to approach, and how to find safe custody for herself, and what to expect. Advise Leela.

Answer: Leela can find out who the executive magistrate in her area is. She can find this out from the police or from the Collector's office. If they do not share this information, she may file an RTI to find out who the executive magistrate or competent authority is. She may ask the executive magistrate, after sharing the facts of the case, to give an order for protective custody.

The executive magistrate may authorize police or a local disabled persons' organization to provide for safe custody for Leela.

Question 3:

Julie, a blind girl, was pelted with stones by a two men on the street, causing injuries to her body. She reported the incident to police but the matter could not go to trial due to lacking evidence. She is in need of compensation to heal, get therapy, feel a sense of justice, and rehabilitate herself. The assaulters could not be identified. Does Julie have a remedy?

Answer:

Julie has a remedy under Code of Criminal Procedure, which amongst other things provides for compensation in cases where no trial takes place because the offender cannot be traced or identified. See Code of Criminal Procedure, section 357A.¹⁵⁹

Question 4¹⁶⁰:

Ayesha, a student with loco-motor disability, was hit by a car rashly driven by a driver, Rustom. Ayesha decided to settle the matter with Rustom, since settlement money would help her pay the medical expenses. Rustom agreed to settle, but never gave money for her car and medical expenses. Who should Ayesha approach for a speedy redressal in this case?

Answer:

In case of accidents, generally the Motor Vehicle Tribunal should be approached. However, the State Commissioner for Persons with Disabilities can be approached in this matter. The Commissioner could settle the matter in a speedy way, with the appropriate remedy. State Commissioner's office is usually located in the capital city of a state. Ayesha may write to him formally by post, by email and if necessary follow up with a phone call sharing necessary facts and evidence (perhaps photographs, repair bills, etc.). The Disability Commissioner would provide an order in Ayesha's favor. If Rustom does not comply, then the matter must be taken to the Motor Vehicle Tribunal and/or court. It must be noted here that it is not mandatory for Ayesha to first approach the Disability Commissioner, though it may be helpful and expedient to do so.

Question 5:¹⁶¹

Sara, a blind girl boarded the Mumbai local late evening, while returning from her college. A middle-aged man standing next to her started to stare at her and was attempting to touch her

¹⁵⁹ Ibid. See Supra Note 23

¹⁶⁰ Quotation 5, Qualitative Data

¹⁶¹ <https://erail.in/info/complaint-rpf-grp/1002>, Read:

<https://timesofindia.indiatimes.com/city/mumbai/visually-challenged-girl-nabs-molester-in-mumbai-local/articleshow/67150958.cms>

inappropriately. She raised the issue with fellow passengers but no one took heed. A. What authority should she complain to? B. What if this happened at an airport or on a flight?

Answer:

- A. Government Railway Police (GRP) is responsible for the safety of passengers on trains. The official helpline number for GRP is 182. To file an FIR/ complaint for a crime, forms are available with conductors, coach-attendants, guards, RPF escorts, etc. both on running trains and on stations.

- B. If at an airport, the Central Industrial Security Force (CISF) can be contacted for safety issues. On a flight, the nearest flight attendant/ flight crew member can be contacted for safety concerns.

9. Sexual Violence - Amritananda Chakravorty

*Amritananda Chakravorty*¹⁶²

Objectives

This module will help the reader to understand:

- Explain the interconnections between gender, violence and disability, and how each plays out in the legal system;
- Explore whether the amendments in the criminal law, like the Criminal Law (Amendment) Act (CLAA) that incorporated many significant reforms in law to facilitate the interactions between Persons with Disabilities (PWDs) and the criminal justice system, are, in fact, effective or not;
- Assess the effectiveness of the law enforcement machinery in addressing Violence and Sexual Assault perpetrated on women and children with disabilities.

9.1 Introduction

Sexual violence against women in India is one of the most egregious forms of violence, and has come under renewed focus in the last few years. Sexual violence includes rape, sexual harassment, molestation, marital rape, and intimate partner violence, amongst others. Over the past 40 years, the gendered understanding of violence has evolved. Whereas only the offence of ‘rape’ existed earlier, and that too limited to ‘penile-vaginal’ sexual intercourse, now the idea of sexual violence covers stalking, voyeurism, sexual harassment as well as an expanded definition of rape. The feminist movement in India contributed to this transformation in the legal regime, which was in the making for decades and finally culminated in the Criminal Law (Amendment) Act¹⁶³ in March, 2013 (hereinafter ‘CLAA’).

At the same time, the extent of sexual violence and harassment amongst women with disabilities (WWDs) is a rampant phenomenon that is often invisibilised, and needs to be urgently addressed. In this context, this module is critical to throw light on the loopholes that still exist in the criminal law, when it comes to dealing with cases relating to persons with disabilities or cases of sexual violence suffered by the women with disabilities in India.

9.2 Sexual Violence and Women with Disabilities in India

1. Sexual violence is a continuum. It includes, but is not limited to sexual acts involving penile penetration, and also extends to offences based on concepts of harm, injury, humiliation

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¹⁶³ More information available at

<https://www.prsindia.org/sites/default/files/Criminal%20Law%20%28A%29%20Act%202013.pdf>

and degradation. In other words, sexual violence includes situations where women are assaulted, stripped, paraded naked, sexually humiliating words or actions, subject to any sexual contact with or exposure of male organs, sexually touched, or harassed, and where their sexual and reproductive organs are mutilated.¹⁶⁴

Violence is like we cannot walk...if there would have been a boy, he might touch us anywhere. He knows that we will not be able to do anything or push him back or run anywhere¹⁶⁵.”

- 30 year old married woman with loco-motor impairment, Naroda, Ahmedabad

These words effectively capture the high vulnerability of women with disability to sexual violence and harassment. Studies indicate that “*more than 70% of women with a wide variety of disabilities have been victims of violent sexual encounters at some time in their lives*”.¹⁶⁶ The reasons for high vulnerability of women with disabilities are varied, including stereotypes of passivity, frequent lack of privacy, the physical difficulties associated with escaping sexual abuse, and the higher rates of exposure to special institutions where sexual abuse and violence is rampant.¹⁶⁷

Some qualitative studies have been undertaken to understand the incidence and nature of violence perpetrated against women with disabilities. For example, a study of 729 respondents in the 12 districts of Orissa showed alarming statistics of sexual violence against women with disabilities, with 12.6% reported rape, and 15% reported being subject to sexual harassment or inappropriate behavior. This was more pronounced amongst women with intellectual disabilities, where 25% reported rape.¹⁶⁸

In another study conducted in South Asian countries, researchers found that in India, out of 317 respondents, 21% reported facing emotional, physical or sexual violence from someone other than their intimate partner, and most had faced the violence in the last one year.¹⁶⁹ In a qualitative study done by a Mumbai-based NGO, the common themes that emerged were an idea of not being accepted by their families, childhood formation of a dependent self-image, and an expectation of limited achievement.

¹⁶⁴Prabha Kotiswaran, “Governance Feminism in the Post-Colony: India’s Rape Law Reforms of 2013” King’s College London Dickson Poon School of Law, Legal Studies Research Paper Series: Paper No. 2016-39, pg: 1-51, at p. 17

¹⁶⁵ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

¹⁶⁶Elman, A. (2005, January). Confronting the Sexual Abuse of Women with Disabilities. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition against Domestic Violence at page 3 of 12

¹⁶⁷Ibid at page 3

¹⁶⁸Shruti Mohapatra & Mihir Mohanty, ‘Abuse and Activity Limitation: A Study on Domestic Violence against Disabled Women in Orissa, India’ Oxfam India Trust, 2004

<http://swabhiman.org/userfiles/file/Abuse%20and%20Activity%20Limitation%20Study.pdf>

¹⁶⁹CREA, ‘Count Me IN!’ Research report on violence against disabled, lesbian, and sex-working women in Bangladesh, India and Nepal (2011) at page 59

While narrating her friend's experience, one girl was quoted saying "it is my friend's experience that once a sighted guy came to her house to teach something and in between the lessons he was misbehaving with her. She was not able to understand as to what was going on with her... We need to tell disabled people what exactly harassment is, she had no idea whether that touch was out of affection or harassment, she was a teenager¹⁷⁰.

- Interview with a girl student with visual impairment, New Delhi

The study also noted that violence was not an exceptional case, but quite routine, a combination of physical and emotional abuse over time.¹⁷¹

These cases and studies indicate the disproportionate incidence of violence, especially sexual violence, perpetrated against women with disabilities. At the same time, the dominant paradigm still views women with disability as devoid of sexuality or as 'asexual' beings. But there are high instances of sexual violence in marriage too.

Even after beating me, if he felt like having sex with me, he would wake me up in the middle of the night, that's fine with him. Each time this happened¹⁷²."

- Separated woman with hearing impairment in New Delhi

Even amongst policy makers, special educators, and women's rights activists, the sexuality of women is considered secondary, and primary emphasis is given to the needs of health, safety, education and employment. As a result, WWDs remain a sexually disenfranchised section of India's population, and there is an overall social rejection of their sexuality.¹⁷³

Questions/Discussion

Does Sexual Violence only refer to rape? Discuss.

What are the major challenges faced by women with disabilities with regard to sexual violence?

¹⁷⁰ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

¹⁷¹ Daruwalla et al, 'Violence Against Women with Disability in Mumbai, India: A Qualitative Study', Sage Open, July-September 2013: 1-9 at pg. 7

¹⁷² Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

¹⁷³ Addlakha, R., "How Young People with Disabilities Conceptualize the Body, Sex and Marriage in Urban India: Four Case Studies' Sexuality and Disability (2007) 25:111-123 at pg. 112

9.3 Legal Framework in India on the Prevention of Sexual Violence

9.3.1 Constitutional Provisions

The Constitution of India¹⁷⁴ guarantees certain fundamental rights to all persons in India, including WWDs. The fundamental rights include:

- Right to Equality and Non-Discrimination (Articles 14-16),
- Right to fundamental freedoms, including freedom of speech, assembly, form associations, residence, and practice any profession [Articles 19(1)(a) to (f)];
- Protection against procedural violations like being punished for the same offence twice, or self-incrimination (Article 20);
- Right to life and personal liberty (Article 21);
- Protection against arbitrary arrest and detention (Article 22);
- Freedom of conscience and free profession of religion (Articles 25-28);
- Rights of cultural minorities to establish and administer educational institutions (Articles 29-30).

The constitutional rights of equality, non-discrimination, privacy, dignity, autonomy and health guaranteed under Articles 14, 15 and 21 incorporate the right to be protected from sexual violence and rape.

9.3.2 Offences under the Indian Penal Code, 1860 (IPC)

The IPC was enacted by the British Colonial administration in 1860, and it contained the offence of ‘rape’ (Sections 375-376, IPC), assaulting a woman with intent to outrage her ‘modesty’ (Section 354), and words/gestures/acts intending to outrage the ‘modesty’ of a woman (Section 509). These three offences constituted the paradigm governing sexual violence in India till recently.

a) Section 375, IPC defined the offence of rape as

“A man is said to commit ‘rape’ who, except in the cases hereafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

First—Against her will,

Secondly—Without her consent,

Thirdly—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt,

Fourthly—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married,

¹⁷⁴ Document available at <http://www.legislative.gov.in/sites/default/files/coi-4March2016.pdf>

Fifthly—With her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

b) Section 376 (1) prescribed punishment for the offence of rape, ranging from a minimum imprisonment of seven years to a maximum of ten years, while Section 376(2) provided for aggravated punishment in cases where the accused was in a position of authority.

c) Section 354, IPC penalises assault or use of criminal force to any woman with intent or knowledge to outrage her modesty, with imprisonment up to two years or with fine or both. The terms ‘assault’ and ‘criminal force’ are defined in Sections 351 and 350, IPC respectively.

d) Section 509, IPC provides for punishment for words, gestures or acts intending to outrage the modesty of any woman or intrudes into her privacy, up to one year of imprisonment or fine or with both.

Besides these, Section 377, IPC prohibits all penile-non vaginal sexual acts between two persons, including oral sex and anal sex, irrespective of age and consent, and makes it liable for punishment up to a maximum term of life imprisonment. Section 377, IPC has been mostly used against gay men and transgender women to target same sex sexual relations, and has been heavily criticised by the LGTBI community. However, in some cases women have relied on Section 377, IPC to counter marital rape (which is exempted in Section 375, IPC), to complain against non-consensual penile-oral and penile-anal sexual acts. Since marital rape is not illegal in India, Section 377 can be innovatively used, as it prohibits penile-oral and penile-anal sexual acts under all circumstances including marriage. Consequently, when rape is defined as an unnatural offense, provisions of 377 can be used to counter rape even in a marital context.

The Courts have time and again held that sexual violence strikes at the root of woman’s privacy and dignity as well as impedes her from accessing public spaces and jobs.

Questions/Discussion

Does the offense of rape include all sexual acts?

Was marital rape covered under the offence of rape?

9.4 Legal Reforms in the Criminal Law on Sexual Violence

It is noted that the IPC provisions on sexual violence, especially on rape, have been amended substantially only twice, in 1983 and then in 2013. In 1983, the Parliament amended the rape law, wherein the present fifth exception in rape law, i.e., consent vitiated by unsoundness of mind, or intoxication, was added. In Section 376 (2), the punishment for aggravated rape in custodial situations, rape of a pregnant woman and gang rape were added.

The second round of substantial amendments happened in 2013. On 16 December, 2012, a 23 years old woman was brutally raped and murdered in Delhi by a group of five men, which resulted in a huge outpouring of protests and demand for complete overhauling of the legal framework governing sexual violence in India. The long pending reforms to expand the definition of 'rape', to recognise other forms of sexual violence, including sexual harassment and stalking, were sought to be fast-tracked. In order to examine the structural issues impacting sexual violence, the Government of India on 23.12.2012 set up a commission headed by retired Chief Justice J.S. Verma, with Justice Leila Seth and Gopal Subramaniam, Senior Advocate, as members.

Recommendations of Justice Verma Committee

The Commission submitted its report in January 2013, and made certain path-breaking recommendations (both substantive and procedural) pertaining to the laws on sexual assault. Some of the recommendations are:

- a. Replacing Section 354, IPC with a comprehensive provision on sexual assault
- b. Adding new substantive offences relating to sexual assault, i.e. assault/use of criminal force to woman with intent to disrobe her (S. 354A), Voyeurism (S. 354B) and Stalking (S. 354C);
- c. Adding new offences of trafficking (S. 370) and employing a trafficked person (S. 370A);
- d. Replacing the offence of rape with a new definition of rape, which included both penile vaginal and penile non-vaginal sexual acts (i.e., oral sex and anal sex) as well as non-penetrative sexual acts without consent, and providing higher punishment (Sections 375-376);
- e. Adding new offences in the context of rape, including,
 - i. Punishment for causing death or a persistent vegetative state in the course of committing rape [S. 376(3) IPC]
 - ii. Intercourse by a person in authority, public authority, etc. (S. 376A, IPC)
 - iii. Gang Rape (S. 376C) and gang rape or a persistent vegetative state (S. 376D, IPC)
 - iv. Punishment for repeat offenders (S. 376E)
 - v. Offence of breach of command responsibility (S. 376F)

¹⁷⁵Ibid at pg 245-246

Repeal of Section 509, IPC (Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both).

Significantly, the Justice Verma Committee had recommended that the victim in the rape offence be gender neutral, i.e., while the accused has to be man, the survivor could be a woman, man or a transgender person. This was owing to the fact that many Lesbian Gay Bi-sexual Trans Intersex groups had asked the Committee to take note of brutal sexual violence committed against them with no remedy in law. Accordingly, the survivor in the offences of aggravated forms of rape was also gender neutral.

1. Furthermore, regarding the other offences relating to sexual violence like sexual assault, or voyeurism or stalking, the Committee recommended that the perpetrator could also be gender neutral, though the survivor in offences of voyeurism or intending to disrobe her would be a woman.
2. Notably, despite huge pressure on the Committee to recommend death penalty for the offence of rape, the Committee took a conscious decision not to recommend death penalty.¹⁷⁶The Committee noted that:

*“In our considered view, taking into account the views expressed on the subject by an overwhelming majority of scholars, leaders of women’s organisations, and other stakeholders, there is a strong submission that the seeking of death penalty would be a regressive step in the field of sentencing and reformation. We, having bestowed considerable thought on the subject, and having provided for enhanced sentences (short of death) in respect of the above-noted aggravated forms of sexual assault, and having regard to the current thinking in favour of abolition of the death penalty and also to avoid the argument of any sentencing arbitrariness, we are not inclined to recommend the death penalty”.*¹⁷⁷

9.5 Criminal Law (Amendment) Act, 2013 (CLAA)

In March 2013, the Parliament passed the CLAA, which made significant improvements in the existing law on sexual assault and rape, and incorporated some of the recommendations of the Justice Verma Committee. The major changes are:

¹⁷⁶Ibid

¹⁷⁷Section 166A (c), IPC

9.5.1 New offences on acid attack

- a. Section 326A provides punishment for voluntarily causing grievous hurt by use of acid with imprisonment ranging from a minimum of ten years to life sentence.
- b. Section 326B provides punishment for voluntarily throwing or attempting to throw acid with imprisonment of not less than five years and up to seven years, along with fine.

9.5.2 New offences on sexual harassment & stalking, amongst others

- c. Sexual Harassment: Section 354A provides punishment for sexual harassment, wherein if a man commits
 - i. Physical contact and advances involving unwelcome and explicit sexual overtures;
 - ii. A demand or request for sexual favours;
 - iii. Showing pornography against the will of a woman;
 - iv. Making sexually coloured remarks.

The punishment for the acts mentioned in clauses (i) to (iii) is up to three years of imprisonment or fine or both, while the penalty for the act mentioned in clause (iv) is up to one year.

- d. Assault/Use of criminal force to woman with intent to disrobe: Section 354B prohibits any man from assaulting or using criminal force on any woman with the intention of disrobing her and makes it liable for punishment, ranging from three years to seven years.
- e. Voyeurism: Section 354C, IPC prohibits any man from watching or taking photos of a woman engaging in a private act, which is punishable with imprisonment from one to three years.
- f. Stalking: Section 354D, IPC prohibits stalking by any man who follows a woman or contacts her despite a clear interest or disinterest by her or monitors her electronic communication, and makes it liable for punishment, up to three years.

9.5.3 Overhauling the definition of 'rape'

- g. Rape: Section 375, IPC redefined the offence of rape to expand it from penile-vaginal sexual intercourse to broader sexual acts. It reads as:

'375. A man is said to commit "rape" if he—

- a. *penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
- b. *inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*

c. *manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*

d. *applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—*

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.'

Questions/Discussion

What are the new offenses on Sexual Violence contained in the Criminal Law Amendment Act 2013?

How has the definition of rape undergone changes in the Criminal Law Amendment Act 2013?

9.5.4 Punishment for Rape

376. 1. Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

- 2. Whoever,—*
 - a. being a police officer, commits rape—*
 - i. within the limits of the police station to which such police officer is appointed; or*
 - ii. in the premises of any station house; or*
 - iii. on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or*
 - b. being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or*
 - c. being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or*
 - d. being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or*
 - e. being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or*
 - f. being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or*
 - g. commits rape during communal or sectarian violence; or*
 - h. commits rape on a woman knowing her to be pregnant; or*
 - i. commits rape on a woman when she is under sixteen years of age; or*
 - j. commits rape, on a woman incapable of giving consent; or*
 - k. being in a position of control or dominance over a woman, commits rape on such woman; or*
 - l. commits rape on a woman suffering from mental or physical disability; or*
 - m. while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or*
 - n. commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.*

*Explanation—*for the purposes of this sub-section,—

- a. "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any Jaw for the time being in force, including the*

paramilitary forces and any auxiliary forces that are under the control of the Central Government!, or the State Government;

- b. *"hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;*
- c. *"police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;*
- d. *"women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.*

New offences of rape: The CLAA introduced new offences, including:

- Punishment for causing death or resulting in persistent vegetative state of victim (S. 376A), ranging from a minimum of 20 years to a maximum of life imprisonment, or with death;
- Gang rape: Section 376D, IPC punishes gang rape of woman, with imprisonment, ranging from twenty years to imprisonment for life.
- Punishment for repeat offenders: Section 376E, IPC provides for punishment for repeat offenders of rape, gang rape, or rape resulting in death/persistent vegetative state, with life imprisonment, or death.

Other offences: They include:

- Sexual intercourse by husband upon his wife during separation, without her consent, is liable for punishment, ranging from minimum of two years to maximum of seven years, and liable to fine (S. 376B);
- Sexual intercourse by a person in authority/in a fiduciary relationship, public servant or superintendent of a jail/remand home with any woman in his custody, even with consent, is an offence and liable for punishment with imprisonment, ranging from a minimum of five years to a maximum of ten years.

9.5.5 Increased punishment for certain offences

- h. Assault or use of criminal force to outrage woman's modesty: The punishment under Section 354, IPC was increased from two years to imprisonment, ranging from one year to five years, and with fine.
- i. Punishment under Section 509, IPC (for molestation) was increased to three years and also with fine.

9.5.6 Penalty for non-registration of FIR

Failure to record FIR by a public servant, i.e., the police official, in cases reporting sexual violence is punishable with rigorous imprisonment, ranging from six months to two years¹⁷⁸.

A bare perusal of the offences would reveal that many recommendations of Justice Verma Committee were incorporated, while leaving several out. However, the specific recommendation on not having death penalty as a punishment was ignored, as the Parliament decided to have death penalty in the offence in Section 376A and Section 376E. The Government also ignored the pertinent recommendation of Justice Verma Committee to have the survivor as gender neutral in the offences of rape and aggravated rape.

Significantly, the CLAA increased the age of consent from 16 years to 18 years, in order to align it with Protection of Children against Sexual Offences Act, 2012 ('POCSO'), thereby criminalising sexual behaviour between 16 to 18, which was highly problematic, and criticised by women's rights and child rights activists. Further, CLAA continued to exempt marital rape from the ambit of Section 375, IPC.

Similar to IPC, several substantive changes were made in the procedural law of CrPC and the Evidence Act, which are:

- i. Recording of information pertaining to offences of sexual assault, sexual harassment, disrobing a woman, voyeurism, stalking, rape and aggravated forms of rape, and molestation by a woman police officer or any woman officer¹⁷⁹;
- ii. Recording of statement of a woman complaining of the above-noted offences by a woman police officer or any woman officer¹⁸⁰;
- iii. The judicial magistrate shall record the statement of the survivor in the prescribed manner as soon as the commission of the offence is brought to the notice of police¹⁸¹;
- iv. No sanction required if any public servant is accused of offences mentioned above or refuses to record FIR in Section 166A©, IPC or Section 166B¹⁸²;
- v. Court to take appropriate measures to ensure that a survivor who is under 18 years of age is not confronted with the accused, while giving her evidence¹⁸³;
- vi. Trial in the offences under Sections 376, 376A, 376B, 376C, 376D and 376E, IPC to be completed within two months of the filing of charge sheet¹⁸⁴;
- vii. Compensation paid to the survivor, besides payment of fine under other laws¹⁸⁵;
- viii. Mandatory medical treatment of survivor in all hospitals, and reporting to police¹⁸⁶;

¹⁷⁸Section 54A, CrPC

¹⁷⁹Proviso to Section 161, CrPC

¹⁸⁰Section 1645A, CrPC

¹⁸¹Explanation to Section 197(1), CrPC

¹⁸²Proviso to Section 273, CrPC

¹⁸³Proviso to Section 309, CrPC

¹⁸⁴Section 357B, CrPC

¹⁸⁵Section 357C, CrPC

¹⁸⁶Section 53A, Indian Evidence Act

- ix. Evidence of character or previous sexual experience not relevant in sexual violence cases¹⁸⁷;
- x. Presumption of absence of consent in prosecutions of aggravated rape in Sections 376(2) (a to n), IPC¹⁸⁸;
- xi. No questions of previous sexual experience of the survivor can be put to her during her cross-examination¹⁸⁹.

Thus, it is evident that many far reaching substantive and procedural reforms in the laws on sexual violence took place in CLAA, while also not incorporating critical changes, as suggested by Justice Verma Committee.

Questions/Discussion

What are the circumstances under which punishment for rape is enhanced under the Criminal Law Amendment Act that goes beyond earlier provisions contained in the Rape Laws?

Why is the punishment for gang rape more severe than other forms of rape?

Do you agree with not having the death penalty as punishment for cases of rape?

Discuss the legal controversy around age of consent.

Do you agree with the presumption of absence of consent in cases of aggravated rape?

9.5.7 Specific Reforms for Women with Disabilities

With respect to women with disabilities, the CLAA brought in the most significant changes in the history of disability rights movement in India, which are:

- a. Person with disability can identify an arrested person under the supervision of a Judicial Magistrate who ought to take appropriate steps that the person identifying is comfortable with the methods used for identification¹⁹⁰;
- b. Identification by a person with disability shall be video-graphed¹⁹¹;
- c. If any offence of sexual misconduct or assault is committed against a woman with disability, then her statement has to be recorded by the police at her home or at a convenient location¹⁹², such recording to be videographed¹⁹³, and her statement to be recorded by the Judicial Magistrate as soon as possible¹⁹⁴
- d. No woman with disability can be required to be present before a police office, except at her own residence¹⁹⁵

¹⁸⁷Section 114A, Indian Evidence Act

¹⁸⁸Proviso to Section 146, Indian Evidence Act

¹⁸⁹Proviso to Section 54A, CrPC

¹⁹⁰Ibid

¹⁹¹Proviso (a) to Section 154, CrPC

¹⁹²Proviso (b) to Section 154, CrPC

¹⁹³Proviso (c) to Section 154, CrPC

¹⁹⁴Proviso to Section 160, CrPC

¹⁹⁵Proviso to Section 164(5), CrPC

- e. When recording a statement by a woman with disability before the Magistrate, the Magistrate has to take the assistance of an interpreter or a special educator in recording the statement¹⁹⁶, and the recording to be videographed¹⁹⁷;
- f. Statement recorded before the Magistrate would be considered as a statement recorded in the trial court, subject to cross-examination so that the woman with disability is prevented from having to make repeated statements¹⁹⁸
- g. If a woman with disability is unable to communicate verbally, then she has to be given the assistance of an interpreter or a special educator in recording the statement, and the statement to be videographed¹⁹⁹

These provisions have been incorporated to facilitate the meaningful participation of women with disabilities, and to secure their access to justice, as guaranteed in the Constitution.

In terms of specific offences, the CLAA incorporates a new element to the offence of rape, wherein if the woman “*is unable to communicate her consent*”²⁰⁰, it would amount to rape. This is extremely relevant for women with disabilities, since often the accused would take advantage of their difficulties in communicating, and commit sexual violence on them.

If I talk about myself...then rape is not necessarily induced by anyone outside your home or outside your sphere. But also the people who are like close to you if I talk about people with disability or I take myself for that matter, people think that the person is available. More prone...more accessible. They don't have to go any...you know anywhere, outside. And also they have this thing in their mind that, if we do anything with this person, she won't she won't be able to say a "no"...because you know she can't do anything. I cannot run. I cannot run and if I...want to do anything, I cannot because of my impairment. So... when I was in relationship to...my boyfriend it was normal. He used to say this a lot to me, and I used to say "no". Then he used to threaten me. As to why do you, why don't you... I mean he was very violent. Although it was a long-distance relationship but whenever we used to meet his intention was like...to have sex. When I used to say a no to him that I don't want to go into all this because, you know, till marriage, until marriage I cannot do anything like this. Then he was like why.. who will do with you then. I am telling you that emotional violence is a form of violence. He would say "you are physically challenged. You'll not get married anywhere. And then who will, how will you get satisfied. I'm here, I'm volunteering myself for this."

-32 years old woman with loco-motor impairment, New Delhi.

In fact, the Courts have for long considered the rape of a woman with disabilities as an aggravating factor, while deciding the sentence of an accused convicted of the offence

¹⁹⁶ Proviso to Section 164(5), CrPC

¹⁹⁷ Proviso (b) to Section 164(5), CrPC

¹⁹⁸Section 119, Indian Evidence Act, 1872

¹⁹⁹Section 375 (d), IPC

²⁰⁰Shankar Kisanrao Khade v. State of Maharashtra (2013) 5 SCC 546

of rape in Section 376, IPC²⁰¹. Before the enactment of CLAA, the Supreme Court has noted the need for higher minimum sentences in case of rape of women with disabilities, wherein it held that “*what happens in a case when the mental age of the victim is not even 12 years? Such a woman is definitely in a more vulnerable situation. A rapist in such a case in addition to physical ravishment exploits her mental non-development and helplessness. The legislature would do well in prescribing higher minimum sentence in a case of this nature. The gravity of offences in such case is more serious than the enumerated categories in sub-clause (2) of Section 376.*”²⁰²

Though the changes made in CLAA have been far-reaching, they are not implemented properly. Most of the police stations or districts do not maintain a list of educators/sign language interpreters available in their area whose services can be utilised.²⁰³ Often, the police officials are themselves not aware of the procedural requirements under the law. It has been found that in many cases, the police do not call any special educator or was unaware of her role, while in others, the police have called a sign language interpreter, instead of a special educator.²⁰⁴

Similarly, the prosecutors and the magistrates/judges are not trained in handling cases relating to the women with disabilities or aware of the procedural requirements, after CLAA.

Questions/Discussion

What are the main reforms in the reporting and recording of statements in complaints of rape in the context of women with disabilities?

Do you agree that the rape of a disabled woman is an aggravated form of rape and the punishment should be more than in the case of a non-disabled woman?

What are the legal remedies available to an acid attack victim?

9.5.8 Impact of the CLAA Reforms

The impact of CLAA, 2013 is yet to be ascertained. Though the trials are said to be fast-tracked, and the provisions of sexual harassment, stalking and voyeurism have been used, the incidence of sexual violence against women has not come down.

In one of the most cited cases of rape under CLAA, 2013, Mahmood Farooqui was convicted of raping a woman by the trial court under Section 376(1), and was sentenced to a minimum of seven years’ imprisonment in August, 2016²⁰⁵. This decision was overturned by the Delhi High Court in July 2017, and Farooqui was acquitted, in a highly problematic decision that came up with the notion of ‘feeble no’. The single judge held that:

²⁰¹Tulshidas Kanolkar v. State of Goa (2003) 8 SCC 590

²⁰²Memorandum to National Commission for Women, December, 2015

²⁰³Ibid

²⁰⁴State v. Mahmood Farooqui, Sessions Case No. 118/2015, Additional Sessions Judge, Special Fast Track Court, Saket (Judgment dated 30.07.2015)

²⁰⁵Mahmood Farooqui vs. State (NCT of Delhi), Delhi High Court (decision dated 25.09.2017)

“Instances of woman behaviour are not unknown that a feeble “no” may mean a “yes”. If the parties are strangers, the same theory may not be applied. If the parties are in some kind of prohibited relationship, then also it would be difficult to lay down a general principle that an emphatic “no” would only communicate the intention of the other party. If one of the parties to the act is a conservative person and is not exposed to the various ways and systems of the world, mere reluctance would also amount to negation of any consent. But same would not be the situation when parties are known to each other, are persons of letters and are intellectually/academically proficient, and if, in the past, there have been physical contacts. In such cases, it would be really difficult to decipher whether little or no resistance and a feeble “no”, was actually a denial of consent.”²⁰⁶

This judgment was then upheld by the Supreme Court, which dismissed the appeal against the State, and the Complainant against the acquittal, in 2018. The decision came under huge criticism for diluting the definition of ‘consent’ in law, for introducing a new defence, which does not exist, and shifting the burden of communicating consent to the complainant.

Legal scholar Pratiksha Baxi noted, *“the judicial invention of the “doctrine of feeble ‘no’” inaugurates a different standard for “positive denial” for the class of educated and cosmopolitan women for whom gender equality is a “buzzword”....Hence, those women who are “intellectually/academically proficient” with a past sexual history of “physical contact” are held to a different standard of consent. Unlike non-literate, married or working-class women, this class of women is expected to communicate the lack of consent vociferously”.*²⁰⁷

Questions/Discussion

Discuss the issue of “feeble no” and “emphatic no” in the context of consent.

9.5.9 Amendments to the Criminal Law (Amendment) Act, 2018

In August 2018, the Parliament enacted another slew of amendments in the criminal law, in order to counter a surge in the incidents of rape and murder of children as evident from the cases of rape of minors from *Kathua region of Jammu and Kashmir in mid-January*, and *Unnao region of Uttar Pradesh*. As a knee-jerk reaction, the Parliament brought about the following changes:

- a. Minimum sentence for rape was increased from seven to ten years²⁰⁸,
- b. New offence of punishment for rape of girl below 16 years shall not be less than 20 years but may extend to imprisonment for life²⁰⁹;
- c. Providing death penalty for those guilty of rape of a girl below 12 years²¹⁰;

²⁰⁶<https://thewire.in/gender/law-no-may-not-actually-mean-no>

²⁰⁷Section 376(1), IPC

²⁰⁸ Section 376(3), IPC

²⁰⁹ Section 376AB, IPC

²¹⁰ Section 376DA, IPC

- d. Punish gang rape of woman below 16 years of age with rigorous imprisonment for life and with fine²¹¹;
- e. Punish gang rape of woman below 12 years of age with rigorous imprisonment for life and with fine or with death²¹².

An analysis of these amendments shows that law on rape in India has become extremely harsh, yet the rate of convictions is low, owing to lack of proper investigation, adequate prosecution, and insensitivity of judges to deal with issues of sexual violence.

Questions/Discussion

Do you think harsher rape laws including death penalty for rape of minors can be effective as deterrents for rape?

9.6 Sexual Violence against Minors

In June, 2012, the Parliament enacted Protection of Children from Sexual Offences Act 2012 (POCSO Act) as a comprehensive legislation to protect children from offences of sexual assault, sexual harassment and pornography. Due regard was given to safeguard the interests and well-being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation, and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.²¹³

1. The main offences covered under POCSO are:

a. Penetrative Sexual Assault: When a person penetrates his penis into the vagina/mouth/urethra/anus of a child, or inserts any object or part of the body into the vagina/mouth/urethra/anus of a child, or manipulates any part of the body of the child or applies his mouth to the vagina/mouth/urethra/anus of the child, then the said person is guilty of penetrative sexual assault²¹⁴. The punishment ranges from a minimum of seven years imprisonment to a maximum of life²¹⁵.

b. Aggravated Penetrative Sexual Assault: Section 5 provides that if a person, being a police officer, or a public servant, or on the management/staff of jail, remand home or any custodial institution, or educational or religious institution, or commits gang penetrative assault, amongst other situations²¹⁶, will be punishable with imprisonment, ranging from a minimum of ten years to a maximum of life, and fine²¹⁷.

²¹¹ Section 376DB, IPC

²¹² Statement of Objective and Reasons, POCSO

²¹³ Section 3, POCSO

²¹⁴ Section 4, POCSO

²¹⁵ Section 5, POCSO

²¹⁶ Section 6, POCSO

²¹⁷ Section 7, POCSO

c. Sexual Assault: If any person, with sexual intent, touches the vagina/penis/anus/breast of any child or makes the child touch such body parts of the person, amongst others, then such person is guilty of sexual assault²¹⁸, and liable for punishment, ranging from a minimum of three years to a maximum of five years, and with fine²¹⁹.

d. Other offences: The Act further provides for aggravated sexual assault²²⁰, punishable with five to seven years' of imprisonment²²¹, sexual harassment²²² that is punishable with imprisonment up to three years²²³, use of child for pornographic purposes²²⁴, which is punishable with imprisonment up to five years²²⁵, and if the person using the child is guilty of penetrative sexual assault or aggravated penetrative sexual assault, then the punishment could be a minimum of ten years and maximum of life imprisonment²²⁶.

2. Notably, the POCSO is gender neutral, i.e., both the accused and the victim could be persons of any gender, which includes even male child and gender non-conforming children. The term 'child' is defined as any person below the age of eighteen years²²⁷.

3. POCSO provides a comprehensive procedure for reporting of offences as well as recording of statement of the child. The important provisions are:

i. Mandatory reporting of child sexual abuse: Section 19 provides that any person, who apprehends that an offence under POCSO is likely to be committed or has knowledge of the same, then he/she shall inform either the special juvenile police unit, or the local police²²⁸. Any failure to give such information or record the information is a punishable offence²²⁹.

ii. Punishment for false complaint or false information: Any person who makes a false complaint or gives false information, in order to humiliate or extort the accused is liable for punishment up to six months or with fine or both²³⁰. If the child is the complainant, then no punishment will be awarded²³¹.

iii. Protection of Identity: The law mandates that the media shall not reveal the identity of the child²³², except on the Court's order²³³, or make any incorrect report impinging on

²¹⁸Section 8, POCSO

²¹⁹Section 9, POCSO

²²⁰Section 10, POCSO

²²¹Section 11, POCSO

²²²Section 12, POCSO

²²³Section 13, POCSO

²²⁴Section 14(1), POCSO

²²⁵Sections 14(3) and 14(4), POCSO

²²⁶Section 2(1)(c), POCSO

²²⁷Section 19(1), POCSO

²²⁸Section 21(1), POCSO

²²⁹Section 22(1), POCSO

²³⁰Section 22(2), POCSO

²³¹Section 23(2), POCSO

²³²Proviso to Section 23(2), POCSO

²³³Section 23(1), POCSO

the child's privacy²³⁴. Any contravention is liable for punishment, from 6 months to one year, or fine or both²³⁵.

- iv. Recording of Statement of Child by Police: Section 24 provides that a child's statement to be recorded at his/her residence²³⁶, preferably by a woman police officer²³⁷, who will not be in uniform²³⁸. The police officer shall also ensure that the child does not come in contact with the accused²³⁹, cannot detain the child at night for any reason²⁴⁰, and must ensure the protection of the child's identity²⁴¹.
- v. Recording of Statement of a Child by a Magistrate: The Magistrate to record the child's statement under Section 164, CrPC as spoken by the child²⁴², and in the presence of child's parents/representatives²⁴³, and record such statement by audio-video means²⁴⁴; the accused's lawyer cannot be present²⁴⁵; and child's parents have to be given copy of the document²⁴⁶.
- vi. Medical Examination of the Child: The Act provides that medical examination of the child victim to be done under Section 164A of CrPC²⁴⁷; in case of girl victim, woman doctor should conduct the examination²⁴⁸, in the presence of child's parents/any other person in whom trust is reposed by the child²⁴⁹.
- vii. Procedure followed by the Special Court: The Act mandates that the accused's lawyer cannot directly ask questions to the child during cross-examination, but route it through the Special Court²⁵⁰; frequent breaks to be given to the child during trial²⁵¹; Special Court to create a child friendly atmosphere by allowing child's parents/guardian/friend to be present²⁵²; child not to be called repeatedly to testify²⁵³; aggressive questioning not

²³⁴Section 23(4), POCSO

²³⁵Section 24 (1), POCSO

²³⁶Ibid

²³⁷Section 24(2), POCSO

²³⁸Section 24(3), POCSO

²³⁹Section 24(4), POCSO

²⁴⁰Section 24(5), POCSO

²⁴¹Section 25(1), POCSO

²⁴²Section 26(1), POCSO

²⁴³Section 26(4), POCSO

²⁴⁴Proviso to Section 25(1), POCSO

²⁴⁵Section 25(2), POCSO

²⁴⁶Section 27(1), POCSO

²⁴⁷Section 27(2), POCSO

²⁴⁸Section 27(3), POCSO

²⁴⁹Section 33(2), POCSO

²⁵⁰Section 33(3), POCSO

²⁵¹Section 33(4), POCSO

²⁵²Section 33(5), POCSO

²⁵³Section 33(6), POCSO

allowed²⁵⁴; protection of child's identity during trial²⁵⁵; and payment of compensation to the child for physical or mental trauma, as deemed fit by the Court²⁵⁶.

- viii. Other Child Friendly Provisions: The child's evidence ought to be recorded within 30 days of the Special Court, after taking cognisance of the offence²⁵⁷, and the trial to be completed within one year²⁵⁸; child cannot be exposed to the accused²⁵⁹; provision for in-camera trial and in the presence of child's parents²⁶⁰.
- ix. Right to Legal Aid: The child's family/guardian is entitled to legal assistance of their choice, and if unable to afford a lawyer, they have a right to get legal aid from the State²⁶¹.

Questions/Discussion

Is there a legal obligation to report instances of child sexual abuse to police?

Can a child be detained at police station for recording of statement?

What are the key procedural safeguards for a child in the POCSO Act?

9.6.1 Specific Provisions for Children with Disabilities

Girls with disabilities are particularly vulnerable to sexual violence and abuse.

Similar to CLAA, the POCSO also provides for provisions that facilitate children with disabilities to report sexual assault or abuse, which are:

I was sexually abused when I was 5 and a half, but I did not tell anyone because I thought I was wrong, because those days nobody spoke about it, so it all went on, bad as it was.

-51 years old woman with visual impairment, New Delhi

- a. the Magistrate/Police Officer 'may' take the assistance of a translator or an interpreter, having such qualifications, experience as may be prescribed, while recording the statement of the child²⁶²;
- b. In case of a child with disability, the Magistrate/Police Officer may seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field²⁶³;

²⁵⁴Section 33(7), POCSO

²⁵⁵Section 33(8), POCSO

²⁵⁶Section 35(1), POCSO

²⁵⁷Section 35(2), POCSO

²⁵⁸Section 36(1), POCSO

²⁵⁹Section 37(1), POCSO

²⁶⁰Section 40, POCSO

²⁶¹Section 26(2), POCSO

²⁶²Section 26(3), POCSO

²⁶³Section 38, POCSO

- c. Assistance of an interpreter or expert while recording of evidence of child by the Special Court²⁶⁴;
- d. State Governments to prepare guidelines for the use of NGOs, professionals, and experts to be associated with the pre-trial and trial stage to assist the child²⁶⁵.

The Protection of Children from Sexual Offences Rules, 2012 further elaborate on the role of experts, interpreters, translators and special educators. The term ‘expert’ is defined in Rule 2(c)²⁶⁶, while the term ‘special educator’ is specified in Rule 2(d)²⁶⁷.

Rule 3 provides that in each district, the District Child Protection Unit (“DCPU”) should maintain a register with names, addresses, and other contact details of interpreters, translators and special educators for the purpose of the Act. It further specifies the qualifications and experience of the interpreters, translators, special educators and experts.²⁶⁸ It further provides that the person engaged must be unbiased and impartial and shall disclose any real or perceived conflict of interest.²⁶⁹

“...children with intellectual disability are more vulnerable to physical, sexual and emotional abuse. Institutions which house them or persons in care and protection, if come across any act of sexual abuse, have a duty to bring to the notice of the Juvenile Justice Board/SJPU or local police and they, in turn, be in touch with the competent authority and take appropriate action”

- **Supreme Court in Shankar Kisanrao Khade v. State of Maharashtra (2013) 5 SCC 546 at para 77.3**

Questions/Discussion

What are the provisions for children with disability to ensure that they can report any offence under POCSO?

9.7 Medical Process, Examination and Treatment

Till recently, the cases of rape and sexual assault focused on medical examination of the survivor more from the perspective of evidence collection, and not from the lens of the health rights of the survivor of sexual assault. This was more pronounced in cases of women with disabilities.

²⁶⁴Section 39, POCSO

²⁶⁵ ‘Expert’ means a person trained in mental health, medicine, child development or other related discipline, who may be required to facilitate communication with a child whose ability to communicate has been affected by trauma, disability or any other vulnerability.

²⁶⁶“Special Educator” means a person trained in communication with children with special needs in a way that addresses the child’s individual differences and needs, which challenges with the learning and communication, emotional and behavioural disorders, physical disabilities, and developmental disorders.

²⁶⁷Rule 3(2), 3(4) and 3(5), POCSO Rules

²⁶⁸Rule 3(8), POCSO Rules

²⁶⁹Section 357C, CrPC

As noted above, the CLAA for the first time included provisions for the treatment of the survivors of sexual assault. Any survivor of sexual assault or acid attack is entitled to free medical treatment by all hospitals, whether public or private.²⁷⁰ In fact, refusal to treat a survivor by a hospital is a punishable offence in law, with imprisonment up to one year or fine or both²⁷¹.

However, the law also mandates that the health care provider has to mandatorily report the incident to the police²⁷², which is highly contentious. Many service providers note that mandatory reporting of sexual assault is a deterrent for the survivors to seek health services, often even emergency services, and advocate for voluntary reporting to police²⁷³.

In 2014, the Ministry of Health and Family Welfare issued comprehensive guidelines for the medico-legal care of survivors of sexual violence. These guidelines mandate that though the survivor may access the health services on her own without wanting to lodge a police complaint, the doctor is bound to inform the police²⁷⁴.

The medical examination of the survivor of rape forms a critical part of the evidence process and trial proceedings.

Medico-Legal Protocol: The MOHFW Protocol provides comprehensive guidance on the health care response to sexual assault and violence. It states that *“health professionals play a dual role in responding to the survivors of sexual assault. The first is to provide the required medical treatment and psychological support. The second is to assist survivors in their medico-legal proceedings by collecting evidence, and ensuring a good quality documentation. After making an assessment regarding the severity of sexual violence, the first responsibility of the doctor is to provide medical treatment and attend to the survivor’s needs. While doing so it is pertinent to remember that the sites of treatment would also be examined for evidence collection later”*.²⁷⁵

Any survivor of sexual assault has the following rights in the context of medical examination:

- **To be examined by a registered medical practitioner within 24 hours in a hospital run by the government or the local authority²⁷⁶;**
- **To be medically examined with her consent, or consent of another person on her behalf²⁷⁷;**

²⁷⁰Section 166B, IPC

²⁷¹Section 357C, CrPC

²⁷²Centre for Enquiry into Health & Allied Themes (‘CEHAT’), ‘Establishing a comprehensive health sector response to Sexual Assault (2013)’
<http://www.cehat.org/go/uploads/Publications/R87%20Establishing%20a%20Comprehensive%20Health%20Sector%20Response%20to%20Sexual%20Assault.pdf>

²⁷³Guidelines and Protocols for Medico-legal care for survivors/victims of sexual violence, Ministry of Health and Family Welfare, Government of India (March, 2014) at pg. 24
<https://mohfw.gov.in/sites/default/files/953522324.pdf>

²⁷⁴Ibid at pg 8

²⁷⁵ Section 164A (1), CrPC

²⁷⁶ Section 164A (4), CrPC read with Section 164A(7)

²⁷⁷Ibid

- **No examination can be conducted without informed consent²⁷⁸;**
- **Examination to be conducted without any delay²⁷⁹, and all material particulars to be mentioned in the report, including any physical or intellectual disability²⁸⁰;**
- **Reasons for each conclusion to be stated precisely²⁸¹;**
- **Exact time of starting and closing of examination should be recorded²⁸²;**
- **Necessary accommodations have to be made by the doctor, including provision for special educators or interpreters, in order to ensure that the survivor is able to communicate effectively²⁸³;**
- **Provided with appropriate and gender sensitive counselling services²⁸⁴**

As per the MOHFW protocol, the following are the components of a comprehensive response:

- a. Providing necessary medical support to the survivor of sexual violence;
- b. Establishing a uniform method of examination and evidence collection by following the protocols;
- c. Informed consent for examination, evidence collection and informing the police;
- d. First contact psychological support, and validation;
- e. Maintaining a clear and fool-proof chain of custody of medical evidence collected;
- f. Referring to appropriate other services for further assistance, e.g., legal services, shelter, etc.²⁸⁵

The Protocol further lays down exhaustive guidelines pertaining to women with disabilities²⁸⁶, including:

- a. Not to assume that the person with disability cannot give history of sexual violence; instead history must be sought independently, directly from the survivor herself;
- b. Must be aware of the kind, nature and extent of disability;
- c. Provisions for special educators or interpreters;
- d. Try to communicate directly with the survivor, despite the presence of interpreters/special educators;
- e. Establish trust with the survivor;
- f. Provide information on the procedures in a simple and understandable language²⁸⁷

Prohibition of the ‘two-finger’ test

Most importantly, the Protocol forbids the horrific practice of conducting per-vaginum examination, commonly known as ‘two-finger’ test to establish rape or sexual violence²⁸⁸. It

²⁷⁸Section 164A(2), CrPC

²⁷⁹ Section 164 (2)(v)(vi), CrPC

²⁸⁰ Section 164A(3), CrPC

²⁸¹ Section 164(5), CrPC

²⁸²Supra 121 at pg. 15-16

²⁸³Ibid

²⁸⁴Ibid at pg. 9

²⁸⁵Ibid at pg 15-16

²⁸⁶Ibid at pg 15-16

²⁸⁷Ibid at pg 28

²⁸⁸Ibid

states that two-finger test can be conducted on an adult woman, only when medically indicated, i.e., to detect infection/injury in the vagina, and not to determine rape.²⁸⁹

Prohibition of ‘two-finger’ test by the Supreme Court

The rape survivors are entitled to legal recourse that does not re-traumatise them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that does not constitute cruel, inhuman or degrading treatment, and health should be of paramount consideration, while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and that there is no arbitrary or unlawful interference with their privacy. Thus, in view of the above, undoubtedly, the two-finger test and its interpretation violate the right of rape survivors to privacy, integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, give rise to a presumption of consent.

However, despite the express ban on the ‘two-finger’ test, some doctors are still conducting the illegal examination for the purpose of evidence collection in rape cases, in order to assess the ‘sexual history’ of the survivor²⁹⁰. Even in terms of the MOHFW protocol, only nine states have adopted those guidelines, while many others follow out-dated ones, which are not as victim-friendly and sensitive as the MOHFW protocol.²⁹¹ Lack of awareness about the protocol amongst doctors, lawyers, police or even judges further creates barriers to women with disabilities to be examined in a dignified and non-discriminatory manner, and to use the evidence effectively²⁹².

²⁸⁹Human Rights Watch, “Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities, April 2018 at pg. 44

²⁹⁰Human Rights Watch, “Everyone Blames Me: Barriers to Justice & Support Services for Sexual Assault Survivors in India, 2017 at pg. 50

²⁹¹Ibid at pg. 50

²⁹²Section 27(1), POCSO Act

Specific provisions on the medical examination of children who are victims of sexual assault/abuse in POCSO

- a. the medical examination of the girl victim shall be conducted in accordance with Section 164A, CrPC²⁹³,
- b. medical examination to be conducted by a woman doctor²⁹⁴;
- c. medical examination to be conducted in the presence of parent or any other person the child trusts²⁹⁵;
- d. provision of emergency medical care within 24 hours²⁹⁶;
- e. in case of penetrative sexual assault, aggravated penetrative sexual assault or sexual assault, the child will be referred to emergency medical care²⁹⁷;
- f. no insistence on any legal or police documentation before providing such emergency care²⁹⁸;
- g. treatment for STIs/HIV or emergency contraceptives could be provided, along with psychological counselling²⁹⁹;
- h. In case of girl with disabilities, the provisions of Section 164A, CrPC along with the MOHFW protocol would apply, and she should be given the assistance of interpreters or special educators.

Questions/Discussion

Can a private hospital refuse to treat a survivor of sexual assault?

Can a survivor be medically examined without her consent?

Can a doctor conduct two-finger test on a survivor?

Can a doctor insist on calling police before providing emergency medical care to a child victim of sexual assault?

Why is it necessary for the health providers to directly communicate with survivor with a disability despite the presence of interpreters/special educators?

9.8 Protection of Identity of Sexual Assault Survivors

Protection of identity of survivor of sexual assault is critical in guaranteeing her rights to privacy and dignity, and to prevent from further harassment and stigma. The IPC makes the disclosure of identity of the survivor an offence, liable for punishment with imprisonment up to two years and also fine³⁰⁰. In effect, no person, including any media, can print or publish the name or any information revealing the identity of the survivor of sexual assault. Similarly, the

²⁹³Section 27(2), POCSO Act

²⁹⁴Section 27(3), POCSO Act

²⁹⁵Rule 5(1), POCSO Rules

²⁹⁶Proviso to Rule 5(1), POCSO Rules

²⁹⁷Rule 5(3), POCSO Rules

²⁹⁸Rule 5(4), POCSO Rules

²⁹⁹Section 228 (1), IPC

³⁰⁰Section 327(2), CrPC

law provides for ‘*in-camera*’ trials in cases of rape³⁰¹, as an exception to the principle of trials being conducted in an open court³⁰².

It is noted that the prohibition is not merely on printing the name or publishing the photograph of the survivor, but on any information disclosing her identity. Elaborating on this aspect, in *Nipun Saxena & Anr. vs. Union of India*³⁰³, the Supreme Court held that *‘the phrase ‘matter which may make known the identity of the person’ does not solely mean that only the name of the victim should not be disclosed, but it also means that the identity of the victim should not be discernible from any matter published in the media. The intention of the lawmakers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future’*.³⁰⁴

However, this bar on publication is not absolute and is subject to certain exceptions,³⁰⁵ including a highly problematic one relating to women with disabilities. The identity of the survivor could be disclosed, either for the purpose of investigation, with the survivor’s consent, and where the victim is dead, minor or of unsound mind, with the authorisation of next kin of the survivor³⁰⁶. Notably, the POCSO Act has overruled the section on ‘minor’, since the POCSO will apply here and not IPC.

However, the exception pertaining to persons with intellectual disabilities is extremely problematic, and has earned the ire of the Court. The Supreme Court noted that *“a person of unsound mind is as much a citizen of this country as a sane person. A person of unsound mind who is also subjected to such a heinous sexual offences suffers a trauma which is unimaginable”*.³⁰⁷

³⁰¹Section 327(1), CrPC

³⁰²(2018) SCC Online SC 2772

³⁰³Ibid at para 11

³⁰⁴Section 228(2), IPC

³⁰⁵Section 228(2) ©, IPC

³⁰⁶*Nipun Saxena & Anr. vs. Union of India*,(2018) SCC Online SC 2772at para 17

³⁰⁷ Ibid at para 50

Supreme Court Directions on Protection of Identity³⁰⁸,

- a. The name of the survivor, who has intellectual disabilities, or is dead, cannot be disclosed even under the authorisation of next of the kin, except in cases requiring the disclosure, to be decided by the competent authority, i.e., the Sessions Court;
- b. FIRs relating to rape and sexual assault and offences under POCSO cannot be put in public domain;
- c. In case the survivor files an appeal against the acquittal of the accused, then she need not disclose her identity;
- d. All documents mentioning the name of the survivor ought to be kept confidential by the police and court, and identical documents, after removing the name, are to be put in public domain;
- e. All authorities to which the name is disclosed by the police or by court also bound to keep it confidential;

All these directions are applicable to Women with Disabilities too.

With respect to POCSO Act, the protection of the child's identity is paramount. In this regard, the following provisions are relevant:

- a. While recording the statement, it is the duty of the police officer to protect the identity of the minor from the media³⁰⁹;
- b. Duty of the Special Court to protect the identity of the child during investigation/trial, and any disclosure can be permitted only by the Special Court for reasons to be recorded in writing³¹⁰;
- c. Prohibition on media to print/publish the child's name or identity³¹¹

As evident, the entire purpose of the POCSO Act is to ensure that the identity of the child is not disclosed, unless the Special Court permits such disclosure in writing, and only if it is in the child's interest³¹².

Similarly, commenting on the media's obligation to protect the child's identity in the sexual assault cases, the Supreme Court held that *"the intention of the legislature is that the privacy and reputation of the child is not harmed. Therefore, any information which may lead to the disclosure of the identity of the child cannot be revealed by the media. The media has to be not only circumspect but a duty has been cast on the media to ensure that it does nothing*

³⁰⁸Section 24(5), POCSO Act

³⁰⁹Section 33(7), POCSO Act

³¹⁰Section 23, POCSO Act

³¹¹Nipun Saxena & Anr. vs. Union of India,(2018) SCC Online SC 2772at para 34

³¹²Ibid at 37

and gives no information which could directly or indirectly lead to the identity of the child being disclosed'.³¹³

Questions/Discussion

Can the identity of survivor of sexual assault be published in the media?

Can a FIR relating to sexual offences or under POCSO be put in public domain?

What are the protections given in POCSO to protect a child victim's identity?

Under which conditions can the identity of a survivor of sexual violence be disclosed?

Under the law, why is it permissible to disclose the identity of survivors of sexual violence with intellectual disabilities?

9.9 Forced Sterilisations and Abortion

Abortion is legal in India. Every woman has a fundamental right to her sexual and reproductive autonomy and choose whether to retain her pregnancy or not. But this is not an absolute right, and is subject to certain exceptions in law, as prescribed in The Medical Termination of Pregnancy Act, 1971 (MTP Act).

The MTP Act seeks to provide for the termination of certain pregnancies by registered medical practitioners. Section 3 of the Act provides that a registered medical practitioner can terminate a pregnancy up to 12 weeks³¹⁴, or two registered medical practitioners can terminate a pregnancy up to 20 weeks³¹⁵, if they are of the opinion that continued pregnancy would involve a risk to the pregnant woman's life or cause grave injury to her physical or mental health³¹⁶, or there exists a substantial risk to the child's health³¹⁷.

The MTP Act allows termination of pregnancy beyond twenty weeks, if the doctor opines that such termination is immediately necessary to save the life of a woman [Section 5(1), MTP Act]

The Act further mandates that abortion could be conducted, only with the informed consent of the woman, and if she is under 18 years of age, or is 'mentally ill', then with the consent of her guardian³¹⁸.

It is noted that the MTP Act is not framed from the lens of women's rights and autonomy over her body, but to exempt medical doctors from penalty vis-à-vis offences in the IPC regarding causing miscarriage and causing fetal death³¹⁹.

³¹³Section 3(2)(a), MTP Act

³¹⁴Section 3(2)(b), MTP Act

³¹⁵Section 3(2)(b)(i), MTP Act

³¹⁶Section 3(2)(b)(ii), MTP Act

³¹⁷Section 3(4), MTP Act

³¹⁸Section 3(1), MTP Act

³¹⁹(2016) 10 SCC 726

Supreme Court Decision in Suchita Srivastava v. Chandigarh Administration
(2009)

“ A woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilization procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children” [para 22]

These observations were then reiterated in *Devika Biswas vs. Union of India*³²⁰, wherein the Supreme Court noted that “the freedom to exercise these reproductive rights would include the right to make a choice regarding sterilization on the basis of informed consent and free from any coercion”.³²¹

In *K.S. Puttaswamy & Anr. v. Union of India*³²², while categorically upholding the fundamental right to privacy, the Supreme Court in a nine judge bench decision held that “the decision in *Suchita Srivastava* dwells on the statutory right of a woman under the MTP Act to decide whether or not to consent to a termination of pregnancy and to have that right respected where she does not consent to termination. The statutory recognition of the right is relatable to the constitutional right to make reproductive choices which has been held to be an ingredient of personal liberty under Article 21. The Court deduced the existence of such a right from a woman's right to privacy, dignity and bodily integrity”.

In a series of cases, the Supreme Court held that termination of pregnancy beyond 20 weeks to save the life of the woman is permissible, and within the limits of reproductive autonomy³²³. In *Meera Santosh Pal & Others. Vs. Union of India*, the Supreme Court held that “though, the pregnancy is into the 24th week, having regard to the danger to the life, and the certain inability of the foetus to survive extra-uterine life, we consider it appropriate to permit the Petitioner to terminate the pregnancy. The overriding consideration is that she has

³²⁰Ibid at para 111

³²¹(2017) 10 SCC 1

³²²X v. Union of India, (2016) 14 SCC 382; X v. Union of India (2017) 3 SCC 458

³²³2017 (3) SCC 462 at para 10

*a right to take all such steps as necessary to preserve her own life against the avoidable danger to it.*³²⁴

However, the doctors are highly reluctant to conduct abortions beyond 20 weeks, without court approval³²⁵. In fact, in most cases, women seeking abortions after 20 weeks have to approach the High Courts or the Supreme Court, who then set up a medical board consisting of a panel of doctors to decide whether abortion could be allowed or not.³²⁶

In one case, a woman was raped in a shelter home, and her request for abortion at 17 weeks was not allowed by the hospital. When she approached the High Court, she was again denied, which was overturned by the Supreme Court. However, she was already 26 weeks' pregnant by the time her matter was heard in the Apex Court, and she was not allowed to abort.

The Supreme Court held:

“The duty cast on the authorities under the Medical Termination Pregnancy Act, 1971 is not dutifully performed, and the failure has ultimately given rise to a catastrophe, a prolonged torment”.

Ms. Z v. State of Bihar [Civil Appeal 10463 of 2017, date of decision: 17.08.2017

9.9.1 Issues of Women with Disabilities

The sexual and reproductive rights of women with disabilities in India have often been ignored, since women with disabilities are perceived as either 'asexual' or lacking sexual desires, as noted before. According to Renu Addlakha, *“for women, disability often means exclusion from a life of femininity, partnership, active sexuality and denial of opportunities for motherhood”*³²⁷. She further notes that sexuality, conjugality and motherhood are associated with normative, desirable and fertile bodies, whereas the disabled body is seen as defective, undesirable and thus, devalued³²⁸. Often, disabled persons themselves deny or repress their sexual or reproductive desires, owing to societal pressure or negative self-image³²⁹.

Instances of forced sterilization within institutions and in families are quite common, in complete bypassing of the sexual and reproductive rights of the women with disabilities.

The Supreme Court in *Suchita Srivastava* held that the State must respect the personal autonomy of a woman with intellectual disabilities with regard to decisions about terminating

³²⁴Centre for Reproductive Rights, “Ensuring Reproductive Rights: Reforms to address women and girls’ need after 20 weeks in India”, November, 2018, at pg- 6-7

³²⁵Ibid

³²⁶Renu Addlakha, Janet Price & Shirin Heidari (2017) Disability and sexuality: claiming sexual and reproductive rights, *Reproductive Health Matters*, 25:50, 4-9

³²⁷Addlakha, R. and Nayar, M Disability and Sexuality, *Intersectional Analysis in India*, Occasional Paper No. 63, August 2017, Centre for Women’s Development Studies

³²⁸Ibid

³²⁹Supra 170 at para 30 and 31

a pregnancy. The requirement of consent cannot be diluted, otherwise it would amount to an arbitrary and unreasonable restriction on the reproductive rights of the survivor.³³⁰

Highlighting the fact that women with disabilities can become good parents, the Supreme Court stated that “*persons who are found to be in a condition of borderline, mild or moderate mental retardation are capable of being good parents. Empirical studies have conclusively disproved the eugenics theory that mental defects are likely to be passed on to the next generation. The said “eugenics theory” has been used in the past to perform forcible sterilizations and abortions on mentally retarded persons*”.³³¹

In another case³³², the Bombay High Court permitted a girl with multiple disabilities (her guardian) to terminate her unwanted pregnancy (survivor of rape) by following the law laid down in *Suchita Srivastava*. The Court held that “*apart from danger to the life of the Petitioner, this Court has to take note of the psychological trauma the petitioner is undergoing as a result of carrying unwanted pregnancy. The pregnancy of the petitioner is definitely unwanted for her and it is violative of her personal liberty*”.³³³

Questions/Discussion

Is abortion an absolute right in India?

Can a woman abort the foetus after twenty weeks?

Can abortion be conducted without the consent of woman?

Do women with disabilities have the right to become mothers?

What are the duties of a doctor under the MTP Act?

Can a doctor be prosecuted for conducting abortion in India?

9.10 Violence in Public Spaces

*‘But where I guess the disability is visible and evident I think it does happen. I heard recently about this disabled girl who was raped by an auto-rickshaw driver, so when it’s visible I think people do at times take advantage.*³³⁴

- *Professor with visual impairment, New Delhi*

As noted before, violence against women with disabilities is endemic in India. They are considered ‘soft targets’ and ‘defenseless’ owing to their impairments. Verbal, physical and sexual harassment in public spaces is quite common, and sometimes women with disabilities do not even perceive them as violence. Their vulnerability is heightened, owing to their

³³⁰Ibid at para 51

³³¹X v. Union of India (2018) 2 Mh. LJ 46

³³²Ibid at para 13

³³³ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

³³⁴Daruwalla et al, ‘Violence Against Women with Disability in Mumbai, India: A Qualitative Study’, Sage Open, July-September 2013: 1-9 at pg 6

dependence on others for support, and them being considered as ‘sexually available’, owing to their disability.³³⁵

‘On platforms, hospitals, whenever there is a crowd there is violence. If a woman is traveling or moving around she is vulnerable for violence especially when she cannot see. Molesters can easily touch them anywhere.’³³⁶

– 23 years old M. Phil student with visual impairment, New Delhi

‘A girl is travelling alone and she is managing herself. The boys around understand that she is blind. One boy tells her that he is also going same way then on the pretext of helping he boarded the auto with her but his intentions might be different’³³⁷.

– 27 years old M. Phil student with visual impairment, New Delhi

‘In my undergraduate studies I was in the train with my sister from Chennai to my hometown. We went to disabled coach. My sister was sleeping but I was not sleeping so I was lying down. There was a guy who was touching my feet, I was woken up, I felt bad but I was not able to shout. It was all so sudden. I asked my sister to wake up she told me not to bother her because she wanted to sleep. This man was partially blind or some kind of handicapped, I don't remember but when my sister was looking he did not touch me. So she hid her face and try to look and then she saw him touching my feet. I was very angry...’³³⁸

– PhD student with visual impairment, New Delhi

These instances show that women with or without disabilities are susceptible to sexual violence at public places. In such scenarios the laws mentioned in this module can be used to file complaints against the perpetrators.

Questions/Discussion

What can a Woman with Disabilities who experiences sexual violence do to get justice?

³³⁵ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

³³⁶ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

³³⁷ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)

³³⁸ Rudul Shah vs. State of Bihar (1983) 4 SCC 141, Sebastian M. Hondray v. Union of India AIR 1984 SC 1026, Bhim Singh v. State of J. & K (1985) 4 SCC 677, Saheli, A Women's Resources center vs. Commissioner of Police Delhi Police Headquarters (1990) 1 SCC 422,

9.11 Compensation and Restorative Measures

In India, there is a well-developed jurisprudence on compensation in public law for the violation of fundamental rights.³³⁹ The Supreme Court in *Nilabati Behera v. State of Orissa*³⁴⁰ held that “a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from and in addition to, the remedy in private law for damages for the tort (a wrongful act or an infringement of a right leading to legal liability) resulting from the contravention of the fundamental right”.³⁴¹

This principle was strengthened in *Delhi Domestic Working Women's Forum vs. Union of India*,³⁴² wherein the Supreme Court directed the setting up of the Criminal Injuries Compensation Board for giving compensation to the survivors of rape, keeping in mind the pain and suffering as well as loss of earnings faced by the survivor³⁴³.

Accordingly, the Parliament enacted Section 357A³⁴⁴ and Section 357B³⁴⁵ of CrPC, which govern the framework of victim compensation scheme in India.

Victim Compensation Scheme: Section 357A(1) provides that the State Governments, in coordination with the Central Government, shall prepare a compensation scheme for the victim or her dependents who have suffered loss or injury as a result of the crime. It is evident that this provision is applicable to all victims of crime and not just to the survivors of rape.

Compensation in specific cases: Section 357B states that in cases of acid attack or gang rape, the State should pay compensation under Section 357A, in addition to the payment of fine to be paid to her in those offences under Section 326A, IPC or Section 376D, IPC.

In effect, the State governments have to frame compensation schemes for the rape survivors under this law, including those with disabilities. Thus, a survivor of rape is legally entitled to compensation in India.

Pursuant to Section 357A, CrPC, many State Governments have framed the compensation schemes specifying the amount of compensation to be paid to the survivors. In

³³⁹(1993) 2 SCC 746

³⁴⁰Ibid at para 17

³⁴¹(1995) 1 SCC 14

³⁴²Ibid at para 15(8)

³⁴³Brought in force in 2009

³⁴⁴Brought in force in 2013

³⁴⁵<http://dlsa.org/wp-content/uploads/2015/12/337686203-Delhi-Victim-Compensation-Scheme-2015.pdf>

2015, the Delhi Government framed the Delhi Victims Compensation Scheme³⁴⁶, which provides the following:

- i. A survivor of rape shall be entitled to compensation, ranging from 3 to 5 lakhs;
- ii. While a survivor of gang rape shall be given compensation, from a minimum of 3 lakhs to a maximum of 7 lakhs³⁴⁷;
- iii. Compensation to be paid to the survivor, or if she is dead, then to her dependents, including the family/relatives, and she is eligible, if she has not received compensation from any other government scheme,³⁴⁸
- iv. One can apply either to the Delhi State Legal Services Authority or the District Legal Services Authority.³⁴⁹

It is noted that though most State Governments have framed the compensation schemes, they are not consistent, since some States have specified very low compensation to be paid. Analyzing the inconsistencies amongst different State schemes, the Supreme Court in *Tekan vs. Goa*³⁵⁰ that “on perusal of the aforesaid Victim Compensation Schemes of different States and the Union Territories, it is clear that no uniform practice is being followed in providing compensation to the rape victim for the offence and her rehabilitation. This practice of giving different amount ranging from Rs 20,000 to Rs 10,00,000 as compensation for the offence of rape under Section 357A needs to be introspected by all the States and the Union Territories. They should consider and formulate a uniform scheme specially for the rape victims in light of the scheme framed in the State of Goa which has decided to give compensation up to Rs 10,00,000”.

The Supreme Court then directed the State Government to pay a compensation of Rs 8000/- per month to the survivor for her entire lifetime. The Court further directed that “all the States and Union Territories shall make all endeavor to formulate a uniform scheme for providing victim compensation in respect of rape/sexual exploitation with the physically handicapped women as required under the law, taking into consideration the scheme framed by the State of Goa for rape victim compensation”.

Pursuant to the Court’s observation in *Tekan*, the Supreme Court has now rationalized the States schemes and asked the National Legal Services Authority (‘NALSA’) to frame a uniform compensation scheme for survivors of sexual assault applicable throughout India. NALSA framed the scheme and submitted it to the Supreme Court, which has approved the same³⁵¹. The scheme specifies that

³⁴⁶Ibid

³⁴⁷Ibid

³⁴⁸Ibid at Section 6

³⁴⁹(2016) 4 SCC 461

³⁵⁰Nipun Saxena v. Union of India (2018) SCC Online SC 2010

³⁵¹ Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018, NALSA https://nalsa.gov.in/sites/default/files/document/VC_SCHEME.pdf

- i. a survivor of rape shall be entitled to compensation, ranging from 4 to 7 lakhs;³⁵²
- ii. a survivor of gang rape shall be given compensation, from a minimum of 5 lakhs to a maximum of 10 lakhs;³⁵³
- iii. And this is applicable in all States.³⁵⁴

Reading both decisions together, it is noted that women with disabilities who are survivors of sexual assault are entitled to compensation under the NALSA scheme up to Rs 10 lakh.

Questions/Discussion

- Does a rape survivor have a legal right to compensation?
- How much compensation is a survivor of rape entitled to?
- Does the compensation differ from State to State?
- What is the procedure to apply for compensation in law?
- If a woman victim of rape dies in the course of the offence, then can her family/relatives be denied compensation?
- Is a survivor with disability entitled to more compensation than a woman without disability?

Conclusion

In light of above, it is evident that the legal framework to address issues of sexual violence in India has evolved in the last few decades, with the emergence of new offences like stalking, voyeurism, disrobing a woman, as well as expanding the scope of offence of rape. In terms of punishment also, the sentences have been made quite severe, ranging from 10 years to even death. The provisions under POCSO too are comprehensive, and intended to be child-friendly. The procedure for treatment and evidence collection also improved a lot, along with strict guidelines for protection of identity of sexual assault survivors and payment of compensation to them. All these provisions are applicable to women with disabilities, along with specific procedures intending to increase their meaningful engagement with the criminal justice system.

This module has highlighted the changing concept of Sexual Violence with specific reference to Women with Disabilities. It has tried to provide an overview of the constitutional and legal framework for prevention of Sexual Violence in India. The module has dealt with the major laws on sexual violence like CLAA and POCSO Act. The module has examined the changing provisions of medical treatment and evidence of survivors for Sexual Violence

³⁵² Ibid

³⁵³ Ibid

³⁵⁴Practicing lawyer, researcher and activist working on gender, governance, law and human rights, Gurugram, India. Email: shalu_nigam@rediffmail.com

including minors; and addressed the issue of abortion especially with regard to Women with Disabilities.

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10. Domestic Violence

Shalu Nigam³⁵⁵

Objectives

This module will help the reader to understand:

- The concept of Domestic Violence
- Domestic Violence laws in India
- The process of litigation under Section 498A under Indian Penal Code.
- The process of litigation under Protection of Women from Domestic Violence Act 2005 (PWDVA 2005)
- Rights available to women including Women with Disabilities, in case of situations of domestic violence

10.1 Introduction

This module will discuss about the domestic violence law in India. It focuses on the legal rights available to women including women with disabilities who face violence in domestic settings. Domestic violence affects women from every social background irrespective of their age, religion, caste or class. It is a violent crime that not only affects an individual person and her children but also has wider implications for society. Domestic violence incurs costs in terms of security and health and may have harmful effects on the children. We will discuss the important aspects of the domestic violence law in this module like the different laws regarding Domestic Violence in India, the reliefs available to the aggrieved woman under Domestic Violence law, process of filing a complaint, different service providers under the law and the reliefs that a woman can claim under the law.

10.2 Domestic Violence

Domestic violence is a broad term which entails not only physical beating but also other forms of violence such as emotional violence, mental violence, sexual violence, financial violence and other forms of cruelty which may occur within a household. It includes any act which harms, injures or endangers the health, safety, limb or well-being of any person. Domestic violence also occurs if a person coerces, threatens, harasses, injures, endangers or harms another for meeting any unlawful demands relating to dowry or any property or valuable security. Some of the examples of such conduct are: beating, forced sexual intercourse, making

³⁵⁵ Streedhan comprises of gifts given to the bride by her parents, husband, in-laws, friends, relatives or anyone else at the time of marriage. This gifts, valuables, cash etc is known as streedhan on which the bride has sole rights. She can claim the same in case the marriage breaks down.

a woman watch pornography against her will, insults, humiliation, blaming a woman for not having a child or not having a male child, repeated threats, depriving a woman or her children of any economic necessities, denial of food, dispossessing of household assets or streedhan³⁵⁶, threats, using weapons to threaten, strangulate or force to have sex with other person, harassment or any other such behavior.

According to Chapter 2, Section 3 of Protection of Women from Domestic Violence Act, 2005, the term domestic violence means

1. Any form of abuse causing harm or injury to the physical and / or mental health of the woman or compromising her life and safety;
2. Any harassment for dowry or to meet any other unlawful demand;
3. Threats to cause injury or harm;

Forms of abuse recognized under the Section 3 of Protection of Women from Domestic Violence Act, 2005

- a. "Physical abuse"- any act that causes bodily injury or hurt
Example - beating, kicking, punching, etc.
- b. "Sexual abuse"- any humiliating or degrading sexual act
Example – forced sexual intercourse by the husband, making a woman watch pornography against her will etc.
- c. "Verbal and emotional abuse" – insults, ridicule and threat causing harm or injury.
Example – name-calling, ostracizing, blaming a woman for not having a male child etc.
- d. "Economic abuse"-- depriving someone of the basic necessities of life and entitlements, thus causing injury or harm.
Example – denial of food, disposing of household assets to the detriment of the woman, disposing off her own assets (such as Streedhan) against her will etc.

In all such cases, the judge must bear in mind the overall circumstances of the case in arriving at a conclusion that an act of domestic violence has been committed.

10.2.1 Is Domestic Violence a Crime?

Domestic violence is an offence and the perpetrator of violence can be punished under Section 498A of the Indian Penal Code or any other relevant section as applicable. A woman can make a complaint to the local police station which will register a FIR (First Information Report), and may arrest the perpetrators(s) of the crime.

³⁵⁶ In this case, the Supreme Court strikes down the word 'adult male' from the definition of 'respondent' as defined under section 2 q of the Domestic Violence Act. A complaint is filed against the brother/son and his wife and two sisters/daughters alleging various acts of violence which was withdrawn a few days later and after three years again the complaint has been filed. The question which came before the Supreme Court is that if a complaint can be filed against the female relatives of the aggrieved person. (For details please read the judgment of the Supreme Court in SLP 9132 of 2015)

10.2.2 Who is Responsible for Violence?

It is an abuser who is responsible for any act of violence he commits. He should be held accountable for his violent actions. There is no excuse for domestic violence. The victim is not responsible for the abuser's behavior.

10.2.3 What are the Laws regarding Domestic Violence?

In India, domestic violence is considered as a crime under Section 498A of the Indian Penal Code. Under this provision, any act of cruelty inflicted on a married woman by her husband or in-laws is considered an offence for which the accused persons may be punished with imprisonment up to three years and/ or fine. This legal remedy only punishes the offender but it does not provide any relief to the survivor.

In the year 2005, the Protection of Women from Domestic Violence Act (Domestic Violence Act) was enacted. This law provides civil remedies to the victims of domestic violence. Before enactment of this law, in order to seek any civil remedies such as divorce, custody of children, injunctions in any form or maintenance, a woman had to go to the civil courts. The Domestic Violence Act now provides all such remedies and recognizes the rights of a woman to live in a violence-free home. The major objective of this law is to stop incidences of domestic violence and provide instant support to a woman who faces violence within the domestic setting. The law operates as a single window system to provide women's access to justice. The idea is to prevent multiplicity of proceedings and procedures.

10.2.4 What is meant by the term Domestic Relationship?

According to Chapter 1, Section 2(F) of PWDVA 2005, Domestic relationship means a relationship between two persons living in a shared household. Domestic relationship can be through marriage – such as wives, daughters-in-law, sisters-in-law, widows and any other members of family; or blood relationship – such as mothers, sisters or daughters; and other domestic relationships including through adoption, live-in relationships, and women in bigamous relationship or victims of legally invalid marriages.

The law addresses the concerns of women of all ages irrespective of their marital status.

10.2.5 What is a 'Shared Household'?

According to Chapter 1, Section 2(S) of PWDVA 2005, a shared household is where the aggrieved person or a woman lives in a domestic relationship, either singly, or along with the man against whom the complaint is filed. It may also imply a household where a woman has lived in a domestic relationship but has been thrown out. This may include all kinds of situations whether the household is owned by the respondent or it is a rented accommodation. It also includes a house either owned jointly by the aggrieved person and the respondent or both may have jointly or singly, any rights, titles or interests.

The Domestic Violence Act recognizes a woman's right to reside in a shared household. This means a woman cannot be thrown out of such household except through the procedure established by the law. In case she is thrown out she can be brought back again after obtaining the order from the court.

This law does not alter the legality of ownership or transfer the ownership and a woman cannot claim that she owns a house; it only provides an emergency relief to the victim in the sense that she cannot be thrown out of her house. For claiming ownership, a woman has to follow a separate legal procedure and has to file a separate application as per the provisions of laws whichever are applicable to her situation.

10.2.6 Who can seek help or can claim reliefs under the Domestic Violence Act?

As per provisions of this Act, any aggrieved woman who is in a domestic relationship with the respondent (the abuser man) and who alleges to have been subjected to the act of domestic violence by the respondent can seek help.

A woman can file a complaint against any adult male perpetrator who commits an act of violence. A woman can file a complaint against her violent husband. She can also file a complaint against any male or female relatives of the husband/ male partner (for example in a live-in relationship) who has perpetrated violence.

Though the Supreme Court in *Hiral P Harosa v Kusum Narrottam Das Harosa* in 2016³⁵⁷ has struck down the term adult male from the definition of 'respondent'.

Any woman or child facing violence in domestic relationship can claim relief under this Act. This includes legally wedded wives who may be abused. Also, mothers, sisters, daughters, widows, women in bigamous relationship, women who are victims of invalid or illegal marriages or women in live-in relationship can claim reliefs under this law.

Example – Jaspreet Kaur is a widow. She is staying with her mother and her unmarried brother Amanjeet for past eight years. After the death of her mother, Amanjeet started torturing Jaspreet. Jaspreet can move an application under the Domestic Violence Act.

This law provides that any woman who is having a 'domestic relationship' or living in a 'shared household' with a man who subjects her to violence can file an application for claiming reliefs provided under the law.

A woman who is in live-in relationship with a man who abuses her can take recourse under this law even though she is not married to him.

Example – Lily is staying with Sanjay for past six years. She got her passport and Voter ID made where Sanjay is shown as her husband. They have not married formally but Sanjay has promised Lily that he will marry once he gets a job in a multinational company. But, as soon as he got the job, Sanjay started abusing Lily. Lily can file a complaint under the Domestic Violence law.

³⁵⁷ Shelter home means any shelter home that is notified by the State government. As per Section 6 of the Act any aggrieved person or the Protection Officer can request a person in-charge of shelter home to assist her.

A minor is also entitled to claim relief under the Act in case they are being tortured or tormented by the adult male(s) within their households. A minor includes any person below eighteen years of age who may be adopted, step child or foster child.

Example – Anita is 14-year-old. She wants to study but her parents are forcing her to marry a man who is 35-year-old. She can file a complaint under the Domestic Violence law.

The mother of the minor can make an application on behalf of the minor child (male or female). In cases where the mother makes an application to the court for herself, the children can also be included as co-applicants for a relief under the Act. The Court can also, whenever appropriate, appoint a guardian or next friend to represent the child.

10.2.7 Who can file a Complaint before the Magistrate under this Act?

A complaint under this Act can be filed before a Magistrate by an aggrieved person or Protection Officer or any other person on behalf of the aggrieved person.

10.2.8 Who is a Protection Officer?

Protection Officer (PO) is appointed by the state government as per the procedure prescribed under the law. PO acts as a link between an aggrieved woman and the court. PO can help a woman in making complaints, filing an application before the magistrate to obtain relief orders and can also help an aggrieved woman to obtain medical aid, legal aid, counselling, safe shelter and other required assistance.

A PO assists the court in making a Domestic Incident Report or an application to obtain orders. A PO also assists the Magistrate in compiling of an order. S/he may conduct the home visit and make an appropriate enquiry regarding the salary, bank details, assets and other emoluments of the respondent who has to pay maintenance. The Courts can also direct the Protection Officer to assist the aggrieved person in regaining the custody of her children.

In case a Protection Officer refuses to help a woman, then the aggrieved woman can make a complaint to the Magistrate.

What are the duties of the Protection Officer?

According to Chapter 2, Section 9 of PWDVA 2005, the duties of the Protection Officer are:

- 1) To assist the Magistrate in the discharge of his functions under this Act;
- 2) To make a domestic incident report to the Magistrate
- 3) To make an application to the Magistrate for issuance of protection order, where the aggrieved person so desires.
- 4) To ensure the aggrieved person is provided legal aid.
- 5) To maintain the list of all service providers.
- 6) To make available a safe shelter home³⁵⁸ if the aggrieved person so requires.

³⁵⁸ Indian Penal Code of 1860

- 7) To get aggrieved person medically examined if she has sustained bodily injuries.
- 8) To ensure that the order for monetary relief is complied with.
- 9) To perform such duties as may be prescribed.

10.2.9 Who are the Service Providers defined under the Domestic Violence Act?

A victim of domestic violence may require various services such as shelter home or safe accommodation, medical aid, child care, legal aid services and other community services. According to Chapter 2, Section 10(1) of PWDVA 2005, the Service Providers (SPs) are the NGOs or voluntary organizations working in the field of domestic violence and are registered with the state government.

SPs are duty bound to provide assistance and support to women facing domestic violence. A woman can go to a registered SP to make a complaint under the Domestic Violence Act. A SP will assist a woman in getting her legal aid, medical care, counselling or any other support she may require.

Questions/Discussion

Under what conditions can a survivor of domestic violence initiate a case under Domestic Violence Act?

10.3 How can a Complaint of Domestic Violence be made?

An aggrieved woman may go to a police station to register her complaint or she can also make a complaint to a Protection Officer or a Service Provider or she may directly go to a Magistrate. A woman may hire her own lawyer and may seek legal advice accordingly. A woman may also seek help from her friends or relatives as the case may be.

The Section 5 of Chapter 3 of PWDVA 2005 says that a police officer, Protection Officer, Service Provider or a Magistrate who receives a complaint of domestic violence or who may be present at the place where domestic violence is committed should inform the aggrieved person about her rights to:

1. To make an application for obtaining the reliefs required as mentioned above;
2. Availability of Services of Protection officer;
3. Availability of Services of Service Provider(s);
4. Right to free legal aid;
5. Right to file a complaint under Section 498A IPC, wherever relevant.

It is not necessary that a woman should go to police station to register her complaint under this law. A woman can seek help of an NGO, Protection Officer or her friends. A Protection Officer can also file a complaint on behalf of a woman. A woman can obtain assistance from the Protection Officer and the Service Provider for getting reliefs under the Domestic Violence Act. In case of an emergency, any woman either herself or any other person on her behalf can

give the information of the incidence of domestic violence to the Protection Officer or to the Service Provider or to the Police officer. It is the duty of the Police officer, Protection Officer or to the Service Provider to assist the woman in an emergency situation.

10.3.1 Which Court can decide the Case?

The Section 27 of Chapter 4 of PWDVA 2005 mentions that a first-class magistrate court or metropolitan court shall be the competent court within the local limits of which:

- The aggrieved person permanently or temporary resides or carries on business or is employed;
- The respondent permanently or temporally resides or carries on business or is employed;
- The cause of action arises.

10.3.2 What can a woman do to get relief from Court if there is no Protection Officer or registered Service Provider in her area?

A woman can go to the police to file a criminal complaint under Section 498A of the IPC³⁵⁹.

She can also request the police to record a DIR³⁶⁰ under Protection of Women from Domestic Violence Act 2005³⁶¹ at the same time and forward the same to the Magistrate.

If the police refuse to file a FIR³⁶² or a Domestic Incidence Report (DIR) then the woman can directly approach the Magistrate's court with the following:

- A "private complaint" requesting the court to direct the police to register the FIR; and / or She can file an application under the PWDVA. For this she can fill a DIR herself and attach it to her application.

If the woman already has a pending case, she can fill an application under the PWDVA, as an "Interim Application" in the pending proceedings.

Questions/Discussion

Discuss the process of filing a complaint under Domestic Violence Act 2005.

10.4. Is there any provision of Counselling under the Domestic Violence Act?

According to Section 14 of Chapter 4 of PWVDA 2005, the court at any stage of proceedings may direct the respondent or the aggrieved person to undergo counselling with

³⁵⁹ Domestic Incident Report is a report made on a prescribed format once a complaint is received from an aggrieved person

³⁶⁰ Protection of Women Against Domestic Violence Act of 2005

³⁶¹ First Information Report which is filed at the Police Station

³⁶² Gifts, valuables, items received by the bride at the time of marriage given to her by her parents, husband, in-laws, relatives and friends belong exclusively to her.

any organization who possess such experience and qualification in providing counselling. The Magistrate at any stage of the proceedings may take the assistance of the family welfare experts.

10.5 General Advice on Filing a Complaint

10.5.1 Can I file a Criminal Complaint against my husband and in-laws if they are Violent?

Yes, any married woman can file a criminal complaint against her husband and in-laws if they are violent. Section 498A of the Indian Penal Code says that in case a married woman faces cruelty at the hands of her husband and in-laws, she herself or her parents, siblings or friends can file a complaint on her behalf.

Once a complaint is filed under Section 498A of the IPC, as per the provisions of the law, the person who inflicts cruelty can be imprisoned for maximum up to three years and the Magistrate can also direct him to pay fine.

10.5.2 What about my Dowry articles and streedhan³⁶³?

An aggrieved woman may make a complaint under the Domestic Violence Act to the Magistrate regarding the retrieval of her dowry articles or streedhan (the married woman's property on which she may claim her right and includes the gifts, valuables and other items she received from her parents, husband or in-laws at the time of marriage or even after her marriage).

Any woman may also register a complaint with the police to get her streedhan back under Section 406 of the Indian Penal Code.

10.5.3 What can I do to lodge a Criminal Complaint?

You can go to the nearest police station and lodge the First Information Report (FIR). You are also entitled to get the copy of FIR without paying any charges.

10.5.4 What can I do if Police refuses to register my Complaint?

In case police refuses to file the First Information Report (FIR) any person can file an application before the Magistrate directly. The Magistrate may direct the police officer to look into the complaint.

10.5.5 I cannot afford to pay the Lawyer's fee. What should I do?

⁹In this case the Supreme Court held that property in question belongs to the Mother-in-law of the complainant wife. Neither was it a property rented by the husband nor it was a joint family property, therefore it is the exclusive right of the mother-in-law where the wife cannot claim that it is a shared household.

Any woman can approach a legal service authority or can go to the legal service committees in case she is having any problem in legal matters. The legal service authorities and legal service committees provide legal aid and free legal services.

A woman facing domestic violence can also contact Protection Officers or Service Providers who may help her in getting legal aid through the legal service committees or the legal service authorities created in every district.

10.6 Reliefs Available Under the Domestic Violence Law

A woman who faces violence within the confines of a home can claim several reliefs under the law. The law recognizes a woman's right to reside in the shared household even when the case is pending before the court. She retains this right even if she shares it with her abusive partner, even if she does not own that house or hold any right, title or beneficial interest in the same³⁶⁴.

The law recognizes the immediate needs of a battered woman for emergency relief which has to be provided by her husband. She has the right to obtain services of Protection Officers, Service Providers, police, shelter homes and medical facilities recognized under the law.

She also has the right to simultaneously file her complaint under Section 498A of the Indian Penal Code as explained above.

Section 18 to 23 of the Domestic Violence Act provides various remedies available to an abused woman. She can obtain:

- Protection Order;
- Residence Order;
- Monetary Relief ;
- Custody Order for her children;
- Compensation Order;
- Interim/Ex-parte orders through the courts.

If the abuser violates any of the above orders, it is deemed a punishable offence. For example, punishment for violation of the Protection Order could extend to imprisonment of one year and/or a maximum fine of Rs 20,000/-

10.6.1 Protection Order

The Magistrate after giving the aggrieved person and the respondent an opportunity of being heard and being satisfied that domestic violence has taken place or is likely to take place, may pass a protection order or a 'stop violence' order and Section 18 of PWVDA 2005 lists the prohibitions that may be contained in the protection order:

- Committing any act of domestic violence;
- Aiding or abetting in commission of acts of domestic violence;

³⁶⁴ Please refer footnote no. 1

- Entering the place of employment or victim's workplace and stop harassing her;
- Attempting to communicate with the aggrieved person or her children in any form;
- Entering the school of aggrieved person if the aggrieved person is a child;
- Alienating assets, bank lockers, bank accounts, streedhan³⁶⁵ used or held or enjoyed by both parties jointly or singly;
- Give away any other property held jointly or separately by the parties without the order of Magistrate;
- Causing violence to the dependents, relatives or any person who is assisting the aggrieved person.

The Magistrate may impose any other condition or pass any other directions to protect or provide safety to the aggrieved person or her child.

The Magistrate may also pass an order directing the police officer

- To give protection to the aggrieved person or
- To assist in the implementation of protection order

The Magistrate may direct the respondent to return the possession of streedhan or any other property or valuable security to the aggrieved person. The Magistrate may ask the respondent to execute a bond (with or without sureties) for preventing the commission of domestic violence again.

10.6.2 Residence Order

Under Section 19 of PWVDA 2005, a residence order may be passed by the court in cases where a woman is thrown out of the house and she wishes to stay in her matrimonial home³⁶⁶ or shared household. The object is to ensure that a woman has a safe place to reside.

In case, a woman does not feel safe living with the male perpetrator of violence, the court may order him to be removed from the shared household. However, a female relative³⁶⁷ against whom a complaint has been made cannot be asked to leave. The court can also direct the perpetrator to provide alternative accommodation to the woman.

The Magistrate on being satisfied that domestic violence has taken place may pass a residence order restraining or directing the respondent including his relatives to:

- Stop dispossessing or disturbing the possession of aggrieved person from the shared household
- Remove himself from the shared household (except women)
- Prohibit entry to any portion of the shared household

³⁶⁵ The household where the aggrieved woman is residing with her husband and his family after her marriage.

³⁶⁶ Female relatives may include sister-in-law, mother-in-law of the aggrieved wife or any other relatives who may be living in the same household where the aggrieved woman is staying

³⁶⁷ Selling the house to someone else or gifting it or donating it to anyone else with the intent to deprive the aggrieved woman of her rights.

- Prohibit alienating or disposing off³⁶⁸ the shared household
- Prohibit renouncing³⁶⁹ his rights in a shared household.

The Magistrate can also direct the respondent

- To provide alternative accommodation for aggrieved person as enjoyed by her in the shared household; or
- To pay rent for the same

10.6.3 Monetary Relief

Under Section 20 of PWVDA 2005, an order for monetary relief can be passed by the court in case a woman has incurred expenditure as a result of violence. This may include expenses incurred by a woman on obtaining medical treatment, any loss of earnings, damage to property etc.

She can also claim maintenance from her male partner.

The Magistrate may direct the respondent to pay the aggrieved person and her child monetary relief to meet the expenses incurred or losses suffered. The monetary relief shall be fair, reasonable and consistent with the standard of living of the aggrieved woman. In calculating the monetary relief, the court may generally consider the following factors:

- Social status of the parties, this includes husband's income and the standard of living of the family
- Reasonable needs of the aggrieved woman including the needs of her clothing, food, residence, medical and other expenses
- The value of wife's property and her income
- The number of persons entitled to maintenance from the husband including his parents and other dependents.

10.6.4 Compensation Order

According to Section 22 of PWVDA 2005, a Magistrate may direct the respondent to pay compensation and damages to the aggrieved person for causing injuries to her including those for mental torture and emotional distress.

A woman can ask for compensation order if she sustained physical or mental trauma. .

³⁶⁸ To give up his rights in the joint family property with the intent to deprive the aggrieved woman or her children of their rights in the property belonging to a joint family

³⁶⁹ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)'

10.6.5 Custody Order

The Magistrate may grant temporary custody of the children to the aggrieved woman or any person making an application on her behalf. This is to prevent a woman from being separated from her children, which itself is an abusive situation. The Magistrate, if necessary, may specify visitation rights of such children to the respondent. The Magistrate may refuse to allow such visits if s/he is of the opinion that any visit by the respondent will be harmful to the interest of the children.

If a matter with regard to the custody of children is pending in a court, an application under the Domestic Violence Act for temporary custody of the children can be made in the same court.

According to Section 23 in Chapter 4 of PWDVA 2005, an interim order can be given by the court at the time the proceedings are initiated under the PWDVA and before a final order is passed. This is to ensure that women are not detrimentally affected during the course of the legal proceedings. The court can grant interim orders after an application is filed and the presiding officer feels that it will be in the interest of justice.

In order to get interim orders, a woman has to show that she has or she is facing violence, or fears violence.

Before passing an order, the Magistrate shall take into consideration Domestic Incident Report received from the Protection Officer or the Service Provider.

In case a woman is facing grave danger, the court can pass an ex-parte or an interim order in her favor.

An ex parte order means an order that is passed in the absence of the other party to the dispute. Such orders are interim in nature and passed only if there is an immediate danger to the person making the application or when the other party refuses to appear in court despite prior intimation given by the court.

Example: Seema has filed an application in court for a “stop violence” order against her brother, John who has been beating her. The threat to her life and safety is so severe that she needs an immediate order. The court can pass an ex parte “stop violence” order against him even without hearing him. The order will be served on him along with the application. He will of course have the right to be then heard and ask for the order to be vacated (i.e. direction by the court to bring the order to an end)

Questions/Discussion

What are the different orders under the Domestic Violence Act 2005?

10.6.6 How long does an Interim Order remain in force for?

Interim orders shall remain in force till such time either of the parties applies for its alteration, modification or revocation. In order to get such an order, a change in circumstances has to be shown. Interim orders are also vacated on the granting of the final order by the Court.

10.6.6 General Queries on Court Orders

○ Can I seek multiple orders?

Yes, any woman depending on her situation may apply for multiple reliefs. *For example, Sapna, staying at her matrimonial, home faces violence and has no other support available. She can file an application to get:*

- 1) A Residence Order where she can stay in her matrimonial home;
- 2) She can also claim maintenance from her male partner for herself and for her children;
- 3) She can also seek a protection order whereby the Magistrate may prohibit her violent partner from inflicting violence on Sapna and her children. Also, court can pass an order whereby prohibiting the violent partner to communicate with the aggrieved woman or her children;
- 4) Sapna can also seek custody order whereby the Magistrate may temporarily grant a woman custody of her children. She can also seek any other relief as applicable to her situation.

○ What if the perpetrator continues to commit violence or violates the orders passed by the court?

Violation or not complying with the order of the court is a criminal offence under this Act. In such cases, the woman can complain to the magistrate or the police or the Protection Officer. The perpetrator can be arrested following such complaint.

Violation of an order of the court attracts imprisonment for a maximum of 1 year and / or a fine of Rs 20,000/- . The court can also initiate proceedings under criminal law, i.e. Section 498A of the Indian Penal Code, in addition to the above

○ What if the woman or the other party is not satisfied with the order that is received?

In such case either party may appeal against the order in the higher court. If the application has been filed in the Magistrate's court then the appeal shall lie before the Session's Court. All appeals have to be filed within a period of 30 days from the date on which either of the parties gets to officially know of the order.

○ **What else can I do if I face a situation of domestic violence?**

Keep Calm. Don't panic. You are not alone.

Seek help.

You may contact a Protection Officer or a Service Provide or a non-governmental organization. You may also contact State Commission for Women or the National Women's Commission.

Conclusion

Any woman who faces violence within her home can file an application for seeking reliefs which are civil in nature.

Any woman or child facing violence in domestic relationship can claim relief under this Act. This includes legally wedded wives who may be abused. Also, mothers, sisters, daughters, widows, women in bigamous relationship, women who are victim of invalid or illegal marriage relationship or women in a live-in relationship can claim reliefs under this law.

A married woman can also file a criminal complaint under Section 498A of the Indian Penal Code against her husband and in-laws. Abusers can be punished under this law. The maximum punishment is imprisonment for three years and fine, as may be decided by the court.

Some Examples from the Field

In this office, white-wash work was going on, so I took a lot of leaves, but my husband used to beat me a lot. I didn't feel like staying there at home. I used to visit my sister's home sometimes or go to the office, to help in cleaning. If I didn't reach home sharp at 6 o'clock, but at 6:05 pm, the moment I reached home, I would be beaten for it. He pushed me on the stairs once. I fell down the stairs. My head was bleeding badly. My clothes were drenched in blood. It was very painful. My chest was hurting with pain. My eyes were swollen. Later again I was beaten badly. My eyes turned completely black, bigger with swelling. I went to the doctor, had medicines, took injections, then became fine. My head used to ache all the time. He doubts me always that I roam around with some man. I never even thought about it. I just do my work and go home. I don't go anywhere else, but he thinks that I lie. My mother-in-law teaches him about me and then husband beats me³⁷⁰.

-A 41-year-old woman with hearing impairment, New Delhi

³⁷⁰ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)'

What can Y do?

Answer: Y can immediately contact the Service Provider or the Protection Officer who can then help her to seek medical assistance.

Further Y can file a complaint under domestic violence Act to seek Protection orders so that her husband or mother-in-law could not commit any further act of violence against her.

She can file an application to seek a residence order where the court may direct her husband to provide her a separate accommodation and she can also seek compensation for injuries and losses she has suffered.

The Act provides that she can stay separately from her violent husband and mother-in-law and can take further decision as to what she may choose to do. She can also request the court to direct her husband and her to stay separately from her mother-in-law depending on the facts and circumstances of the matter.

Y can also claim maintenance from her husband under the law

She can also file a criminal complaint against her husband and mother-in-law under Section 498A of the Indian Penal Code along with other relevant provisions relating to injury she has sustained. For this, she needs to keep the medical record of her injury as evidence.

I. 'She is a friend of mine, I met her a few days back. Her husband also had a bit of disability, and she also. She can walk but she has some weakness in her legs. She told me that she is a working woman, what happened with her was that she got married, and her in-laws put all the pressure of household chores on her, she used to not get food properly on any other thing, and also she was pressurized to have kids. Her health was not allowing her to do that, the husband forced sexual relationships on her, it was forcefully, and finally when after some years, when she was not able to take any more then she left him. Even now after nine year she is not stable, she still is leading a very stressful life'³⁷¹,

- Friend has locomotor impairment, based out of New Delhi

How can Z help friend?

Answer: Z can take her friend to a Protection Officer or a Service Provider where the Protection Officer or Service Provider can counsel Z's friend.

Z's friend may also file an application under the Domestic Violence Act where she may claim maintenance from her husband, in case she requires financial assistance and they have not filed a case to obtain divorce yet.

Z's friend may demand compensation from her husband under the provision of the Domestic Violence Act.

³⁷¹ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)'

*I. 'It was a love marriage. My child was about to be born. As the hospital charges a lot of money, so when the turn came for paying at the hospital, my husband said that he would pay the amount. Days went on, but he didn't turn up. Finally, I had to beg people for money and somehow managed to pay the hospital, after which I went back to my mother's house. He used to beat me a lot and later, came there too. I had a piggy bank, where I used to store my money, but he used to take that also from me, for drinking alcohol. Further, he left the responsibility of two children on me alone.'*³⁷²

- R, a middle-aged woman having polio, Ahmedabad

What can R do?

Answer: R can claim maintenance for herself and her children under the Domestic Violence Act or under Section 125 of the Criminal Procedure Code³⁷³ or under Section 24 of the Hindu Marriage Act in case her marriage is performed as per Hindu rites and ceremony³⁷⁴. R can also claim maintenance for her children including the school fee and other expenses under the Domestic Violence Act

R can file for Protection Orders where the court can direct her husband to stop beating her or her children and may also request the court to prohibit her husband to communicate in any manner or to visit her or take her money or to prohibit him to contact their children except by permission of the court.

*I. 'The house was to be bought in my name but he betrayed me there as well. He bought the house in his name. I thought let it go, as it will be our house. After that he started blaming me that I am having relationships with people at my workplace. Things are okay so long as I give money but once I don't give money then this is the problem.'*³⁷⁵

- A 37-year-old married woman with loco-motor impairment, Ahmedabad

What can M do?

Answer: M can file an application under the Domestic Violence Act to stay in the household which has been bought. The laws in our country have no provision for division of

³⁷² Section 125 Criminal Procedure Code provides that a woman practicing any religion can claim maintenance from her husband provided that she has not remarried, she is not living an adulterous life and that she does not have means to sustain herself while her husband is a man of means.

³⁷³ A woman hailing from any other religion has to claim maintenance under the law as applicable to that situation.

³⁷⁴ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)'

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matrimonial property, but at the time of divorce, a woman may informally claim her rights as in this case M can show her bank account details as to money she has spend on the purchase of the house. She can also file a civil injunction suit to claim her rights to the house which they have purchased from her money depending on the facts and circumstances of the case.

M can also file an application under the Domestic Violence Act for her mental, emotional and financial harassment and may seek compensation orders. Besides, she can choose to stay separately in case she wishes to do so.

Activity

The participants divide into small groups and each group is asked to take one case study from the following, discuss it thoroughly and answer the questions. Then one person from each small group presents their case study and answers to the large group. A discussion on each presentation can be held.

I. Sarla got married to Aakash a month back. Aakash and her father taunted her for not bringing dowry. She was not given food, and all the gifts Sarla received at the time of her marriage were taken away by her father-in-law. The house belongs to her father-in-law.

- Q. What do you think Sarla can do to obtain her rights?
- Q. Do you think Sarla can file a complaint under Section 498A Indian Penal Code for domestic violence and under Section 406 of the Indian Penal Code to reclaim her streedhan?
- Q. Can Sarla stay within her matrimonial home?
- Q. Can Sarla demand for a separate residence under this law?
- Q. Can Sarla apply for protection orders?
- Q. Can Sarla claim compensation from her husband?

II. Sania is a widow. She is staying with her father and brother Afzal. Her father died two months back. Now Afzal is asking her to leave the house.

- Q. What do you think Sania should do?
- Q. Can she take action against her brother under the Domestic Violence Law?
- Q. Can Sania file for Protection Order?
- Q. Should Sania stay in her father's house?

III. Archana got married to Sunil six years back. They have a daughter, but Sunil wanted a son. He threw Archana out of her house with the child. Now she is staying at her parent's house.

- Q. What do you think Archana can do to obtain her rights?
- Q. Can she file an application for claiming maintenance for herself and her daughter?

Q. Can she go back and stay at her matrimonial home? What order will she require from the court in that case?

IV. Kamla is staying with her brother at her parent's house. She got a job as a dance trainer. Her brother used to physically beat her and would not allow her to go out or to take up the job. She has filed a case against her brother under the Domestic Violence Act. She got a protection order in her favour two days back. But her brother is still threatening her.

Q. What do you think Kamla can do to obtain her rights?

Q. Can she make a complaint to Protection officer about the matter?

Q. What if the Protection Officer fails to do anything? Can she make a complaint to the Magistrate?

Q. Can she seek an order against her brother not to stalk her or come to the dance center where she has got a job as a trainer?

V. Ritu got married to Mukesh two years back. Mukesh's family demanded 2 lakh cash and a car which Ritu's parent could not afford. Mukesh kept their four-month-old son and threw Ritu out of the house. Currently, Ritu is staying with her sister. She is worried about her child. What to do you think Ritu CAN do?

Q. Can Ritu apply for a custody order to seek temporary custody of her son?

Q. Can she apply for an interim relief order?

11. Economic Violence

*Dipika Jain*³⁷⁶ and *Kavya Kartik*^{*377}

This module will help the reader to understand:

- The concept of Economic Violence;
- The economic rights available to women including women with disabilities;
- The legal remedies available to women including women with disabilities in cases of economic violence.

11.1 Introduction

People with Disabilities face a circular system of economic marginalization. Studies have shown a two-way link between disability and poverty: households with at least one PWD shows signs of downward economic mobility; because of unemployment (Mitra and Sambamoorthi, 2006 at 4).³⁷⁸ Despite government policies to the contrary, PWDs who are employed experience lower wages, lack of advancement opportunities, and discrimination (Kumar et al., 2012).³⁷⁹

This module explores the various policies issued, judgments passed, and laws adopted in support of improving access to employment and economic resources, and the loopholes that allow continued economic marginalization of PWDs, particularly women with disabilities. Despite the strong framework established to protect the rights of PWDs, women with disabilities experience economic violence due to exclusion and marginalization. Businesses and government agencies have failed to implement many of these policies and many women with disabilities do not know their rights. Able-ism continues to flourish and harm the livelihood of women with disabilities. This module intends to educate women with disabilities on their entitlements under the law, as well as highlight areas for growth.

Although inheritance law varies by religion, women with disabilities generally have the right to inherit property and such titles and resources should pass to them without discrimination. They are also entitled to maintenance from their husbands. Despite courts

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³⁷⁸Sophie Mitra and Usha Sambamoorthi, *Employment of Persons with Disabilities: Evidence from the National Sample Survey*, 41. *Economic and Political Weekly* 199 (2006).

³⁷⁹Arun Kumar et al, *Trapped Between Ableism and Neoliberalism: Critical Reflections on Disability and Employment in India*, 32(3) *Disability Studies Quarterly* (2012)

recognizing their constitutional right to housing, many PWDs face discrimination in renting or buying properties; this infringes on their legally recognized rights. The government has yet to adopt specific anti-discrimination legislation to protect this inalienable right.

PWDs are entitled to the same social security benefits as persons without disabilities, and protected by government welfare initiatives. They are entitled to health care and health insurance at the same premiums as non-disabled persons. PWDs are also entitled to the same employment opportunities, and the Rights of Persons with Disabilities Act, 2016, prohibits the Government from discriminating in employment processes. Furthermore, the Government has a legal mandate to reserve a certain allotment of positions for PWDs as well as support vocational training and other employment resources for them. Finally, persons with disabilities can avail of concessions for transportation and educational scholarships.

Although women with disabilities may be particularly vulnerable (economically as well as physically) when it comes to dowry, such demands are illegal and punishable under the law. Further, the Protection of Women from Domestic Violence Act, 2005 prohibits economic abuse (by the family or intimate partners) of women with disabilities. Accessibility is also paramount. If PWDs cannot access a service due to physical barriers, the service is inequitable. By law, all public buildings must be accessible.

Women with disabilities are entitled to equitable treatment under the law and by society. To improve living conditions for all PWDs, the current laws and policies must be implemented as well as additional initiatives adopted to fill missing gaps in services (particularly, the adoption of laws to ensure equal treatment in private sector businesses). For example, many schools lack the economic resources to make instruction accessible to children with disabilities. In sum, despite the considerable framework establishing rights for women with disabilities, much needs to be done to ensure that such laws are appreciated in practice.

11.2 Inheritance and Maintenance

In India, inheritance and rights to maintenance are governed by the personal laws of each religious community. This part of the module will discuss the fundamentals of each law for Muslims, Christians, Hindus and Parsis. It will also highlight some landmark cases that have paved the way forward for women to claim maintenance.

11.2.1 Inheritance

There are two ways to inherit property – through a will or through the operation of law when a person dies ‘intestate’ (without a will). The rules on inheritance differ based on the religion.

For a will to be valid, a few conditions must be satisfied:

- The testator (person executing the bill) must be of sound mind and of the age of majority;
- The will must be made free of undue influence or coercion;

- The execution of the will must be witnessed by at least two persons, and the signature or mark of the testator must appear on the will;
- Persons with disabilities can execute wills; the only challenge is for persons with mental illnesses or intellectual disabilities, as valid wills must be written while the testator is of sound mind. However, if done in the presence of witnesses who can attest to the mental capacity of the testator, and if no coercion is involved, the will would be valid.

Note: the concept of ‘sound mind’ is defined in Section 12 of the Contract Act, 1872 and explained in more detail below.

It is very important to note that **disability (mental or physical) is not a disqualification for inheritance** under any of these religious laws. Depriving a person with disabilities of their right to inherit property is illegal and actionable under both civil and criminal laws.

A. Muslims

In matters of succession, marriage, divorce, maintenance etc., Muslims are governed by Sharia, according to the Muslim Personal Law (Shariat) Application Act, 1937. The rules are different for Sunnis and Shias.

Muslims do not have a claim to property on birth, but are entitled to a share after the death of their ancestor³⁸⁰. Upon death, they have a legal right to the property. There may be some variances in the shares of property that men and women inherit, as the amounts are pre-fixed. However, the law makes it clear that women have absolute ownership over any property they inherit. In a will, no more than 1/3rd of the property can be bequeathed to someone without the consent of all the legal heirs. This consent must be definitive; silence is not consent.

B. Christians

The Indian Succession Act, 1925, governs inheritance for Christians. After the Supreme Court’s judgment in the case of Mary Roy³⁸¹, the Act was extended to all Christian communities in the country. When a Christian dies intestate, the property passes on equally to the sons and daughters. No preferential rights are given to men. If a man has died leaving a wife, she inherits 1/3rd of the estate while the rest is divided equally among his children. However, it is possible for someone to leave their entire property to a single heir through a will.

C. Hindus

³⁸⁰ Ancestor refers to a person who is predecessor in a family line. In the law, it is the person from whom property can be derived by right.

³⁸¹ Mary Roy v. The State of Kerala, (1986) AIR 1011. This case ensured that women in the Syrian Christian community in Kerala have equal rights with their male siblings in ancestral property. The Supreme Court extended the application of the Indian Succession Act, 1925, to the entire region. Further case details available at : <https://indiankanoon.org/doc/1143189/>

The Hindu Succession Act, 1956, governs inheritance for Hindus (as well as Sikhs, Jains and Buddhists). After an amendment in 2005, daughters were made equal coparceners on par with sons, and are now entitled to an equal share in ancestral property. The property cannot be given away in a manner that denies any legal heir their rightful share. However, self-acquired property is not subject to this rule and people are free to will it away as they choose (to anyone).

Ancestral property is any property that has been passed down from generation to generation in a family, without any division or partition. A coparcener is a person who has the right to share equally in the inheritance.

Separate or self-acquired property is any property purchased by an individual through their own resources and effort, and does not create coparcenary rights.

When a Hindu dies intestate, their property passes on to their legal heirs as laid out in the Act. No preferential rights are given to men over women. Moreover, women have absolute ownership over any property they inherit. Finally, section 28 of the Act specifically states that *no person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever*. This provision means that no condition of disability or disease can disentitle a person from inheriting property, unless it is specifically stated in the Act. In other words, women with disabilities are fully entitled to their share in the property. Combined with all the other provisions, this ensures that women with disabilities enjoy full rights to inherit property.

D. Parsis

Chapter 3 of the Indian Succession Act applies to the Parsi community. Men and women have equal rights to inherit when their ancestor dies intestate. In cases where a will has been executed, the property will devolve as per the conditions laid out in it.

Example:

Interviewer: What about you Sukanya? Do you think that disabled women get equal decision making right in important decisions like property?

Sukanya: No, they don't.

Interviewer: Do their family members refuse to do so? What do people think?

Kavita: Firstly her disability comes. They think that what she will do with the matters of property or bank. They think like this. They manage expenses for us so long as they are alive but don't think what will happen to us when they die. They generally give all the property to boys or girls who are not having any disability³⁸².

– 19-year-old B.A. student with Visual Impairment, Ahmedabad.

³⁸² Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)'

This situation is unfortunately quite common. In the matter of writing wills, the law does not dictate whom the property should be left to, except for Muslims where consent of heirs is required³⁸³. However, in the cases of intestate succession, women with disabilities have a right to a share in the property.

11.2.2 Maintenance

Although right to maintenance³⁸⁴ is given under the religious personal laws, there is also a secular provision in the Code of Criminal Procedure (CrPC). This provision allows wives, minors, children with disabilities who have attained majority but are unable to support themselves, and parents, to claim maintenance from the person who has the means and responsibility to maintain them. This is applicable to all communities and religions.

Section 125 CrPC – Where there is a neglect or refusal to maintain a person, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

The Hindu Marriage Act, 1955 (HMA) and the Hindu Adoption and Maintenance Act, 1956 (HAMA), grant Hindu women (and men) the right to claim maintenance. Section 24 and 25 of the HAMA allow for interim or permanent alimony and maintenance during the pendency of the case, where permanent maintenance is given after a decree for divorce or judicial separation has been passed. Moreover, the HAMA, under section 18, states that a Hindu wife is entitled to live separately from her husband without losing the right to maintenance in cases where she has been deserted, treated cruelly, or for various other reasons.

The Muslim Women (Protection of Rights on Divorce) Act, 1986 entitles Muslim women to maintenance from their husbands during the *iddat* period³⁸⁵, but not after. If the woman is not financially independent after this period, her relatives are bound to maintain her and the State Waqf Board may step in if they are unable to do so. While this provision appears to restrict the right to maintenance, the Supreme Court has upheld the rights to maintenance of Muslim women and children in several cases under Section 125 of CrPC.

³⁸³It should be noted that the ability of persons with intellectual disabilities to give consent is still ambiguous under law, even though India has ratified the United Nations Convention on the Rights of Persons with Disabilities and has inserted appropriate sections in the Rights to Persons with Disabilities Act 2016. However, the idea of legal incompetence can potentially be used to disentitle women with disabilities from giving/not giving consent.

³⁸⁴Maintenance includes an entitlement to food, shelter, clothing and other necessities such as medical treatments. It can generally be claimed by wives, elderly parents and minor children – although the specifics vary according to each religious law.

³⁸⁵ In Islamic law, *iddat* is the waiting period that a woman must observe after the death of her spouse or a divorce. Divorced women generally observe *iddat* for three months, while widowed women observe four months and ten days.

Significantly, the Court stated that a Muslim father has the obligation to maintain his children until the age of majority, or until they are financially independent, whichever comes first.³⁸⁶ In the landmark *Shah Bano* case, and affirmed in later cases, the Court ruled that Muslim women have the right to maintenance under Section 125 of the CrPC as it a secular provision.³⁸⁷ Finally, in the *Danial Latifi* case, the Court ruled that payment of *mahr*³⁸⁸ does not absolve the husband of the obligation to pay maintenance to his wife.³⁸⁹

The Indian Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936, and the Special Marriage Act, 1954 provide maintenance rights to Christians, Parsis, and women in inter-caste or inter-faith marriages respectively. The amount of maintenance is determined by the Court, taking into consideration the husband's assets and income, the wife's own assets and financial earning capacity, as well as the conduct of both parties.

Women and girls with disabilities are equally as entitled as non-disabled women to claim maintenance from their husbands, parents, or adult children.

Example:

Anita- They don't give a single penny for anything.

Interviewer: Then how do you travel to the institute from your home and vice versa?

*Anita: The bus passes are free. I have asked for it on several occasions to buy or to eat something, but my parents don't pay it to me*³⁹⁰.

- 22-year-old girl with Hearing Impairment, New Delhi

³⁸⁶Noor Saba Khatoon v. Mohammed Qasim, AIR 1997 SC 3280. In this case, the Supreme Court ruled that under Section 125 of the CrPC, a Muslim father has an obligation to maintain his children. He cannot refuse to maintain his children on the grounds that he has divorced their mother. This provision is not affected by the 1986 Muslim Women Divorce Act. Further details of the case are available at <https://indiankanoon.org/doc/1512218/>

³⁸⁷Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945. In this case, the Court held that when a divorced Muslim woman is unable to maintain herself after the *iddat* period, then her former husband is obligated to provide maintenance even if this is not envisaged by Islamic law. Payment of the *mahr* will not absolve the husband of his obligation. This was a landmark case that upheld the rights of Muslim women to claim maintenance beyond the *iddat* period. Further details of the case are available at <https://indiankanoon.org/doc/823221/>

³⁸⁸Mahr is mandatory payment by the groom or his family to the bride, at the time of marriage, under Islamic law. It can include money, jewellery, furniture, land etc. Mahris typically written down in the marriage contract (*nikahnama*) and becomes the absolute legal property of the woman.

³⁸⁹Danial Latifi v. Union of India, (2001) 7 SCC 740. The Supreme Court held in this case that in a conflict between a secular code (such as the CrPC) and the rights or obligations of individuals laid out in personal religious laws, the former will prevail. Furthermore, while the right of a divorced Muslim woman to maintenance generally ceases after *iddat*, this does not apply to special situations where she is unable to maintain herself after that time. In such circumstances, the relatives of the woman or the State Waqf Board will be liable to maintain her. Further details of the case are available at <https://indiankanoon.org/doc/410660/>

³⁹⁰ Women's Fund Asia – Centre for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)'

As an unmarried woman, Anita has a right to maintenance from her parents until she becomes financially independent.

Finally, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, states that senior citizens are entitled to maintenance from their adult children to the extent that it enables them to lead a normal life. In addition, the Act mandates governments to ensure that old age homes are established and provide for expanded treatment options in healthcare facilities.

Hypothetical:

1. Zara is a Muslim woman with visual impairments. Her parents Ali and Miriam died in a car accident in 2011. Zara has three brothers, Muhammad, Yusuf and Mustafa. After the death of their parents, their home in Defence Colony, New Delhi, went under litigation as Zara's brothers refused to give out her share. In anticipation of disaffection among the siblings, Ali and Miriam had built four different floors in their house and clearly allocated the same to each child. Hence, Zara and her brothers would get 1/4th share each. The three brothers are arguing first, that Zara is disqualified to inheritance due to her disability and second, that their consent had not been taken before the said allocation in the will. Does Zara have any remedy as per the Muslim laws of succession?

2. Sapna is a Hindu woman with cerebral palsy. She married her boyfriend Anuj in 2014. Soon after marriage, Anuj started mistreating her by diverting her salary and earnings for his own indulgent expenses, thereby depriving her of control over her own finances. Sapna filed for divorce in 2016 and claimed for maintenance and damages for Anuj's negligent and cruel behaviour. She further filed to live separately in her own apartment, to ensure physical freedom from Anuj. Explore Sapna's remedies under Hindu laws.

11.3 Housing and Property Rights

A 2015 study by the Ministry of Housing and Urban Development, found that women across India are discriminated against with respect to their rights to own, access, use, and control land, housing, and property. Researchers have argued that women's ownership of property improves their social standing within and outside of the family, strengthens their decision-making ability and provides them with a source of livelihood; thus, empowering them economically. In fact, research has also significantly demonstrated an integral relationship between women's ownership of land and assets, and reduction in the incidences of violence (Shandilya, 2018).³⁹¹

In India, housing and property rights of disabled persons are governed primarily under the Rights of Persons with Disabilities Act, 2016. Further, the Constitution and The National

³⁹¹Divita Shandilya, *Above All, Owning Property Gives Abused Women the Option to Leave*, The Wire, March 8, 2018, available at <https://thewire.in/gender/women-property-rights-womens-day>; ICWR, *Property Ownership and Inheritance Rights of Women for Social Protection- The South Asia Experience*, available at <https://www.icrw.org/wp-content/uploads/2016/10/Property-Ownership-and-Inheritance-Rights-of-Women-for-Social-Protection-The-South-Asia-Experience.pdf>

Trust Act, 1999 guarantee fundamental rights of housing, while the Transfer of Property Act, 1882 regulates the relocation of property from one person to the other. In a pursuit to reconcile such divergent rights, one may find a complex scenario of persuasive arguments of rights of individuals as well as rights of the community.

11.3.1 Housing and Rent

The Supreme Court has affirmed in several cases that the right to housing is an integral part of the fundamental right to life under Article 21 of the Constitution. In the landmark *Francis Coralie v. Union Territory of Delhi* case³⁹², the Court held that clothing and shelter, among other necessities, are an inalienable component of the right to life.

For women with disabilities, the rights of access to housing and ownership of property are enumerated in the Disabilities Act in clear terms. Moreover, the National Trust Act envisions persons with disabilities living independently and as close as possible to the community to which they belong.

Section 37 of Disabilities Act - Reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with **appropriate priority to women with benchmark disabilities**

This provision places an obligation upon the central and state governments to give women with disabilities priority in housing schemes. While there is no legislation yet that addresses housing discrimination, all persons are entitled to shelter, in order to live with dignity. Depriving someone of shelter would be a violation of the right to life.

11.3.2 Right to Own Property

Although ownership of property is not a fundamental right, the Disabilities Act provides for all persons with disabilities to be guaranteed their right to own property and to enjoy full legal capacity on par with everyone else.

Section 13 of the Rights of Persons with Disabilities Act 2016 directs governments to ensure that persons with disabilities have rights, equally with others, to own or inherit

³⁹²Francis Coralie Mullin, (1981) 1 SCC 608. In this case, the Supreme Court ruled that a prisoner/detenu has all the fundamental rights available to other persons, other than those that are inconsistent with incarceration. Moreover, the Court recognized that for all persons, the right to life and liberty guaranteed by Article 21 of the Constitution must be construed in a wide and liberal manner. The 'right to life' is more than a mere animal existence; it includes the right to live with dignity, bare necessities of life such as clothing, food, shelter, as well as facilities to express oneself in diverse forms (reading, writing etc.). Any act that impairs human dignity would constitute a deprivation of this fundamental right. Further details of the case are available at <https://indiankanoon.org/doc/78536/>

property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit.

Section 13(2) directs governments to ensure that the persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law.

The conveyance of property from one person to another is regulated by the Transfer of Property Act, 1882. Persons with disabilities are entitled to own or rent property and alienate it as long as they fulfill the requirements laid out down in this Act. All persons with disabilities are also entitled to give or receive gifts of property – movable and immovable. Finally, since transfer of property is considered a contractual transaction, it must meet the conditions for execution of contract. This means that no person can be compelled to give away any share of their property.

Note: Property transfers are subject to the provisions of the Contract Act, 1897. Sections 11 and 12 of this Act lay down the conditions for who is competent to contract. Only those who are of ‘sound mind’ i.e. capable of understanding it and of forming a rational judgment about the contract are considered competent. However, a person of unsound mind who has a moment of lucidity and becomes of sound mind temporarily, can execute a contract during that period.

One day her uncle came and asked for money for medicines. She said that money is in the room at the back, and he can take it. He took all her jewellery along with all the money. Her grandfather passed away. He took all her farmland as well. He refuses to give that back, and threatens her younger brother to sign on a paper so that he can take complete ownership of everything³⁹³.

– 27-year-old divorced woman with locomotor impairment, Ahmedabad.

The situation described above is a common occurrence in the lives of many women with disabilities. However, it is necessary to keep in mind that it is not legal. This woman is entitled to her farmland and jewellery, and she can approach the court to reclaim her property from her uncle.

Nevertheless, a distinction needs to be drawn between persons with physical disabilities and those with socio-psychological or intellectual disabilities. The National Trust Act contains various provisions for the guardianship of persons with developmental and multiple disabilities and these can become a source of exploitation. For those who are deemed to be ‘not of sound mind’, their guardians are empowered to make various decisions concerning their needs.

Hypothetical:

³⁹³ Women’s Fund Asia – Center for Women’s Development Studies, New Delhi fieldwork leading from the South Project ‘Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)’

I. Zoraver is a 47-year old man with autism. He has been struggling over the past 6 years to buy a flat at a sea-facing apartment complex in Chennai. He has identified a vacant penthouse, and has been negotiating with the landlord, but was denied the right to purchase the same due to his insistence to reside in the apartment as a single resident. Although Zoraver has a happy family life, he wishes to purchase the flat, arguing his freedoms as an adult while simultaneously presenting a medical certificate arguing capacity to live alone. The housing committee of the complex has also argued that giving Zoraver such rights would be pointless, as he would be disqualified from disposing of the property to anyone due to his disability. Zoraver has approached the Madras High Court in a petition to seek constitutional rights to purchase the flat. Conceptualise arguments for him.

Questions/Discussion

Have Persons with Disabilities been deprived of Right to Property?

How can provisions of Section 11 and Section 12 of the Contract Act 1897, be challenged from a Rights based perspective?

11.4 Social Security

Social security is also known as welfare, and is the term used for a government system that provides monetary assistance and other benefits to citizens. Article 43 of the Constitution states that the government must endeavor to secure work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. For women with disabilities to live their life to the fullest, they must have access to education, employment opportunities, food and adequate healthcare.

Section 24 of the Right to Persons with Disabilities Act, 2016, requires governments to formulate necessary schemes to provide **social security for persons with disabilities**, and to safeguard and promote their rights.

This includes but is not limited to –

- (i) Community centres with good living conditions in terms of safety, sanitation, health care and counselling;
- (ii) Facilities for persons including children with disabilities who have no family or have been abandoned, or are without shelter or livelihood;
- (iii) Support during natural or man-made disasters and in areas of conflict.

11.4.1 Healthcare

The judicial interpretation of Article 21 has recognized the right to health as a part of the fundamental right to life, and thus, the government is required to provide adequate healthcare facilities to all people, regardless of their income. This is also provided for in the Rights to

Persons with Disabilities Act 2016 wherein Section 25(1)(a) urges governments to take necessary measures to provide free healthcare in rural areas. Furthermore, Section 25(1)(c) urges priority in attendance and treatment for persons with disabilities.

Section 24(3)(f) of the Rights to Persons with Disabilities Act 2016 states that governments must ensure provisions of aids and appliances, medicine and diagnostic services and corrective surgery free of cost to persons with disabilities (with such income ceiling as may be notified).

For those who are looking after children with high-support needs, Section 24(3)(i) allows schemes formulated by the government for the purpose of safeguarding the rights of persons with disabilities to include provisions for care-giver allowance.

The Delhi High Court issued a judgment in 2012 that directed Postal Life Insurance schemes offered by India Post to provide maximum cover for persons with disabilities, and charge the same premiums, on par with non-disabled persons.³⁹⁴ In 2018, the Court ruled that discrimination in health insurance – based on genetic heritage – is unconstitutional and violates Article 14 of the Constitution.³⁹⁵

In addition:

Section 25(2)(k) of the Disabilities Act mandates the promotion of **sexual and reproductive healthcare** especially for women with disability.

Section 25(1)(b) of the Disabilities Act mandates **barrier-free access** to all healthcare institutions, public and private.

A barrier is any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural, which hampers the full and effective participation of persons with disabilities in society.

11.4.2 Food

As with many other basic rights, the right to food is rooted in the right to life guaranteed by Article 21 of the Constitution. The Supreme Court in *PUCL v. Union of India* (commonly known as the Right to Food case) issued several orders protecting the right of all persons to adequate nutrition and water, and directed the government to develop distribution schemes for food.³⁹⁶

³⁹⁴Vikas Gupta v. Union of India, W.P. (C) No.10323 of 2009 (decided 2012). The petition was filed in public interest to keep the maximum sum assured for disabled persons at par with non-disabled persons and to reduce the premium for disabled persons by bringing it at par with that for non-disabled persons in Postal Life Insurance. The court allowed this writ petition and directed the union of India to treat persons with disability at par with the non-disabled persons in the matter of Postal Life Insurance by providing them with the same maximum cover and charging them the same premium as being charged from non-disabled persons. Further details of the case are available at <https://indiankanoon.org/doc/199414067/>

³⁹⁵ United India Insurance Company Limited v. Jai Parkash Tayal, RFA 610 of 2016. Further details of the case are available at <https://indiankanoon.org/doc/60279502/>

³⁹⁶ People's Union of Civil Liberties (PUCL) v. Union of India, Writ Petition (Civil) 196 of 2001. Starting in 2001, the Supreme Court has issued several orders in this case that has come to be known as the Right to Food case. It has restored mid-day meals in schools, directed states to identify BPL households for distribution of

The Court emphasized that it is of utmost importance to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children.

Furthermore, Article 47 of the Constitution states that the government must include raising the level of nutrition and the standard of living of its people and the improvement of public health among its primary duties.

In 2013, the Parliament passed the National Food Security Act, 2013 aiming to provide subsidized food grains to those who need it. Under this Act, certain households are identified as 'priority' for targeted distribution schemes such as the Antyodaya Anna Yojana scheme. It is not mandatory to have an Aadhar card to avail Below Poverty Line (BPL) benefits.

Any person with a benchmark disability is entitled to a priority ration card. Single women with no assured means of subsistence are also entitled to this.

11.4.3 Employment

Article 16 of the Constitution provides for equality of opportunity in employment for all citizens. Additionally, Article 41 requires the government to 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. The Rights of Persons with Disabilities Act 2016 also contains several empowering provisions on this subject. Section 20 has some of the most significant protections for persons with disabilities:

Section 20 – No Government establishment shall discriminate against any person with disability in any matter relating to employment.

- 1) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.
- (2) No promotion shall be denied to a person merely on the ground of disability.
- (3) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service.

While governments may notify certain establishments as exempt from these requirements, the inclusion of a clear non-discrimination clause is critical for persons with disabilities seeking gainful employment. Furthermore, the establishment must be accessible to all (barrier-free) and reasonable accommodations must be made for those who require it.

food, and directed them to provide food on priority basis to the aged, infirm, disabled, destitute, pregnant and lactating women, and children. This case continues to have a positive impact on the lives of the marginalized. Further details of the case are available at <http://www.righttofoodcampaign.in/legal-action/supreme-court-orders>

I worked for 2 years there. Then because of my spoilt face, they removed me from the job. That time my face very much damaged. It is now relatively better due to medicines. It was very blackish. The owner used to say that due to my damaged face, customers get confused so I cannot sit on the counter of the shop. Either I should look for another job, or do the work of 'sari folding'. I said, I won't do the sari folding task. I will only do the job which has been given to me based on my graduation. He said, they don't like when I sit in the front counter of the shop because the customers just focus on me³⁹⁷.

– 21-year-old Acid Attack Survivor, New Delhi.

In the 2015 case of *Parivartan Kendra v. Union of India*, the Supreme Court directed all governments to take measures for the inclusion of acid attack survivors in lists for disability benefits.³⁹⁸ Thus, the rights given in the Disabilities Act must be extended to them, especially women, who face these attacks the most. Moreover, **all public sector employers are prohibited from discriminating against persons with disabilities.**

Section 19 of Disabilities Act – mandates the government to formulate schemes and programmes including provision of loans at concessional rates, to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.

The section goes on to state that mainstream vocational and skill-training programmes must provide for the inclusion of persons with disabilities, and that inclusive schemes must be developed and implemented for those with intellectual or multiple disabilities.

The Act also contains provisions on reservation and urges governments to provide incentives to the private sector so that at least 5% of the workforce is composed of persons with benchmark disabilities.

Section 34 of Disabilities Act – Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities; of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:

³⁹⁷ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)'

³⁹⁸ *Parivartan Kendra v. Union of India*, (2016) 3 SCC 571. Appalled by the plight of acid attack survivors, the Supreme Court in this case condemned states for their failure to monitor the supply and sale of acid, and neglect in paying compensation. The Court also stressed the need for rehabilitation and directed governments to treat survivors as physically disabled persons entitled to all benefits that persons with disabilities receive. Further details of the case are available at <https://indiankanoon.org/doc/16029001/>

- (a) blindness and low vision
- (b) deaf and hard of hearing
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness, in the posts identified for each disability

Finally, for those who have registered with the Special Employment Exchange – an office established by the government to collect and maintain records of persons with disabilities seeking employment – and could not be placed in any gainful occupation within two years, Section 24(3)(h) provides for unemployment allowance.

For women with disabilities, it is important to note that government establishments are bound to follow the ‘equal pay for equal work’ principle. Article 39(d) of the Constitution as well as Supreme Court jurisprudence in cases such as *Mackinnon Mackenzie v. Audrey D’Costa* have upheld this.³⁹⁹ The Equal Remuneration Act, 1976, also explicitly states it.

Section 4(1) of Equal Remuneration Act – No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favorable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

It means that women who perform the same or similar work, as their male colleagues must receive the same rate of remuneration. Moreover, Section 5 of this Act also prohibits employers from discriminating against men and women workers during recruitment.

11.4.4 Service Matters

Part XIV of the Constitution discusses Service Matters under the Union and the States. As per Article 310, the tenure of any civil servant under the Union lasts as per the pleasure of the President, and the post under the State last held during the pleasure of the Governor. Article 311 determines the conditions of dismissal, removal or reduction of rank of persons employed in civil capacities. These conditions broadly include a right to be reasonably heard in cases of charges surfacing against the said person, and that the authority of such removal, dismissal or reduction of rank does not lie with anyone of a rank subordinate to that which he/she was appointed under. The Disabilities Act also provides protection for persons with disabilities pertaining to service matters:

³⁹⁹ *Mackinnon Mackenzie & Co. Ltd vs Audrey D’Costa*, 1987 AIR 1281. The Supreme Court discussed Article 39(d) of the Constitution and its significance in ensuring equal remuneration for men and women workers. Where the work done by men and women is broadly same or similar, there can be no basis for discrimination on the ground of sex. The Act does not permit management to pay lesser rates to one group of workers if the work is of a similar nature. Further case details are available at <https://indiankanoon.org/doc/1194347/>

Section 20 of Rights to Persons with Disabilities Act 2016– No Government establishment shall discriminate against any person with disability in any matter relating to employment

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service. *Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:*

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a superannuary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

Further, the All India Services Act, 1951 regulates the recruitment, and the conditions of service of persons appointed, to the All-India Services common to the Union and the States. Supplementing this is the All India Service (Leave) Rules, 1955.

Rule 16 of All India Service (Leave) Rules – Special Disability Leave

16 (1) Special disability leave, which may be combined with leave of any other kind, may be granted to a member of the Service under such conditions as may be prescribed in the regulations made in this behalf by the Central Government in consultation with the State Governments concerned.

16 (2) Such leave shall not be debited to the leave account except as provided in sub-rule (6) of rule 20.

16 (3) Such leave may be granted on more than one occasion if the disability is aggravated or reproduced in similar circumstances on a later date but not more than twenty-four months of such leave in all shall be granted in consequence of any one disability.

16 (4) When a member of the Service suffers an injury while on service under the Armed Forces, any period of leave granted under the leave rules applicable in the Armed Forces in respect of that injury shall be treated as leave granted under this rule.

Further, under Rule 20 (5), for special disability leave of an *initial period of 120 days* a member of the Service shall be entitled to leave salary equal to the pay drawn immediately before proceeding on earned leave. Under Rule 20 (6), for special disability leave of *beyond the initial period of 120 days* a member shall again be entitled to leave salary equal to the pay drawn immediately before proceeding on earned leave. However, the earned leave account in the latter case will be debited with half the number of days for which leave salary is granted. Under Rule 20 (7), leave salary during special disability leave for *any other period* is entitled to a salary equal to half the amount of salary equal to the pay drawn immediately before proceeding on leave.

There is a separate statute that governs the above, i.e. the All India Service (Special Disability Leave) Regulations, 1957. Section 3 determines the conditions for granting the same

to a member suffering from a disability as a risk/ special risk of office. The period of leave under Section 3(2) is to be certified and extended by a medical board.

The Industrial Disputes Act, 1947 governs the provisions regarding the retrenchment of employees. Section 25F determines conditions precedent to the retrenchment of workers that must be fulfilled to determine the retrenchment to be valid. The Supreme Court judgment of *Anand Bihari v. Rajasthan State Road Transport Corporation*, concerned the retrenchment of drivers with impaired vision by the Rajasthan State Road Transport Corporation, due to their “unfitness for driving heavy motor vehicles”.⁴⁰⁰ The Court held that the workmen were incapacitated to work only as drivers, but weren’t rendered incapable of taking any other suitable job. Upon non-availability of such alternative jobs, the employee was to be granted a compensatory amount.

11.4.5 Education

Education is a fundamental right and is entrenched in the Indian legal system. The Supreme Court in cases such as *Mohini Jain v. State of Karnataka* has highlighted this.⁴⁰¹ Parliament has also passed the Right to Education Act, 2009, which calls for free education, prohibition of expulsion of elementary age children from school, and prohibition on corporal punishment. Article 21A of the Constitution states that all children between the age of six and fourteen years must be given free and compulsory education. However, the Disabilities Act goes even further:

Section 31 of the Disabilities Act – every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, of his (or her) choice

This is a very empowering provision for children with disabilities, who now have the right to free education until the age of majority. The Scheme of Inclusive Education for Disabled at Secondary Stage (IEDSS) aids with the education of children with disabilities from grades 9-12. Chapter III of the Disabilities Act contains other provisions on education.

Section 16 of RPWD Act 2016, for example, states that the government must endeavor to provide inclusive education for all children with disabilities. Section 18 of RPWD Act 2016

⁴⁰⁰ *Anand Bihari v. Rajasthan State Road Transport Corporation*, (1991) 1 SCC 731. The Supreme Court in this case used strong language to condemn the actions of Rajasthan SRTC in retrenching several workers, stating that these workmen were not ‘denizens of an animal farm’ who could be ruthlessly eliminated once they are deemed useless. They cannot be left in a position where they are unable maintain their families, bring up their children etc. Even if their disability renders them unable to perform the necessary functions of the job, they must be provided with adequate compensation and retirement benefits. Further case details are available at <https://indiankanoon.org/doc/1727786/>

⁴⁰¹ *Miss Mohini Jain v. State of Karnataka*, 1992 AIR 1858. Drawing upon the principles of human dignity as a basic right, the Supreme Court noted that dignity cannot be assured until an individual’s personality is developed through education, and thus ruled that education is a fundamental right for all persons. The Court also read this right into Article 21 and recognized that charging capitation fees limits access to education. Given the rates of illiteracy in the country, it is critical that education is available to everyone. Further details of the case is available at <https://indiankanoon.org/doc/40715/>

requires the government to take necessary measures for promoting adult education programmes. Further, section 32 of RPWD Act 2016 states that government institutions of higher education, and any higher education institution receiving funding from the government, must reserve not less 5% seats for persons of benchmark disabilities.

Finally, Section 20(2)(c) of the Mental Healthcare Act 2017 states that persons with mental illness must have reasonable facilities for education. Thus, it is not only persons with physical disabilities who can demand accessible education but also those with intellectual disabilities, as well as a wide range of mental illnesses.

11.4.6 Economic Rehabilitation

The National Policy for Persons with Disabilities, 2006 lists various strategies to assist with the economic rehabilitation of persons with disabilities. Although it was put in place before the enactment of the Disabilities Act, it still contains some useful features:

- **Securing employment in government establishments**
 - Mandatory reservation of seats
 - Prohibition on denial of promotions based on a person's disability
- **Securing wage employment in private sector**
 - Development of appropriate skills through vocational training
 - Providing incentives, awards, and tax exemptions to encourage the employment of persons with disabilities
- **Encouraging self-employment**
 - Taking measures for preferential treatment for procurement of goods and services from the enterprises of persons with disabilities
 - Giving priority in financial support
- **Supporting women with disabilities**
 - Development of special programmes to rehabilitate abandoned disabled women/girls by encouraging their adoption in families, providing financial support to house them and impart training for gainful employment skills
 - Development of programmes to protect women from exploitation

11.4.7 Concessions for Women with Disabilities

As per the Central and State governments of India, the following concessions and benefits are available to all persons with disabilities ⁴⁰² (Rehabilitation Council, 2000):

Travel

1. By rail – entitled to get 50-75% concession on their fare (including escorts)

⁴⁰² Concessions given by the Central and State Governments for the Disabled (2000), available at http://www.rehabcouncil.nic.in/writereaddata/Appendices_5.pdf

2. By air – visually impaired persons can get up to 50% concession. Orthopedically disabled persons may carry mobility aids or prosthetic devices free of charge
3. By bus – each state has its own policy but most will provide concessions on bus passes for persons with physical disabilities, as well as student fares for children. They can approach the regional transport office in their area to know more.

Communication

1. Telephone facilities to visually impaired persons will be provided at 50% of the normal rental rate
2. Educated (up to 8th standard for rural areas and matriculation for urban areas) but unemployed persons are given preference in allotment of STD/PCO booths

Scholarships

Students with disabilities (specified in the Disabilities Act, 2016) are eligible for scholarships provided by the Department of Empowerment of Persons with Disabilities. The categories available are⁴⁰³ (Ministry of Social Justice and Empowerment, 2018):

- Pre-Matric Scholarship (Class 9 and 10)
- Post-Matric Scholarship (Class 11 to post-graduate degree or diploma)
- Top Class Education Scholarship (Graduate and PG degree or diploma)
- National Overseas Scholarship (Master's and Ph.D. studies abroad)
- National Fellowship (M.Phil. and Ph.D. in Indian Universities)
- Free Coaching Services (For entrance or recruitment examinations)

Fifty percent of the total scholarships available each year are reserved for women and girls with disabilities, except for the National Overseas Scholarship where 30% are reserved for women/girl candidates.

Hypotheticals:

I. Samantha is a 27-year-old woman with speech impairment. She has been working for 3 years as a financial advisor with the Haryana wing of the Swacch Bharat Abhiyan. During one of her field visits, she was inspecting the residences in Sonipat for unintended water collection and ended up contracting dengue. She was granted leave for a period of 120 days and full salary. Her colleague Sukrita, who has cerebral palsy, also contracted dengue on a night-out with members of the office. She applied for leave but was granted only a period of 60 days with half salary. She filed a complaint stating inadequate

⁴⁰³ Central Sector Scheme of Scholarships for Students with Disabilities (2018), available at <https://scholarships.gov.in/public/schemeGuidelines/DEPDGuidelines.pdf>

remuneration and demanded a higher amount of salary, as she had contracted the disease as a 'special risk of office' like Samantha. Determine the rights in the hands of the two.

Questions/Discussion

Discuss the meaning and importance of Special Disability Leave in the context of Service Rules.

11.5 Other Economic Violations

Economic abuse is understood as – the deprivation of all or any financial resources to which a person is entitled under the law (including household necessities and payment of rent, maintenance etc.), disposal of any assets that a person is entitled to use or which may be reasonably required by the children, and restriction or prohibition of access to facilities that a person is entitled to use or enjoy.

11.5.1 Dowry Demands and Economic Abuse

In India, women with disabilities face great challenges during their marriage as dowry demands are constantly made. If their families are unable or unwilling to give dowry, the women are at risk of violence. It is necessary that women are equipped with the knowledge that dowry is a crime in this country and it is illegal to both receive and give dowry, whether in cash or kind.

<p>Section 3 of the Dowry Prohibition Act – If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more.</p>

It is necessary to note that *mahr* given or received in a Muslim marriage contract does not constitute dowry.

Section 304B of the Indian Penal Code (IPC) states that in cases of 'dowry deaths', the burden of proof shifts on the accused, if the victim was a married woman who died within 7 years of marriage, there is evidence of harassment or cruelty due to dowry demands, and if injuries that caused death are out of the ordinary.

Section 498A of the IPC also states that a husband or relative of husband who harasses a woman for dowry is said to be subjecting her to 'cruelty' and is thus liable for prosecution under the Act.

Finally, the Protection of Women from Domestic Violence Act, 2005, is worth examining. This Act was passed to ensure effective protection of the rights of women who are facing violence within the family or in any related matters. Economic abuse is specifically included in the definition of domestic violence, under the statute which defines it as any act or

conduct that endangers the health, safety, life and well-being, whether mental or physical, of the aggrieved person. A perpetrator under this Act is one who is physically, sexually, verbally, emotionally or economically abusive; who harasses or injures the aggrieved person to coerce her or any of her relations to meet dowry demands; threatens the aggrieved person or otherwise causes her any harm.

Any woman facing domestic violence in one or more of any of the above forms may make an application to the Magistrate for relief, and the Magistrate is empowered to pass protection orders if he sees fit.

I remained quiet for so long, but now this is unbearable. If something happened in my family such as any function where I had to give something to my sister, he would always get angry and wouldn't let me go, saying that I didn't have to give anything to them. It is not my right now as I was a girl. Sometimes Rs.100 was given, otherwise he won't let me give anything else. But my family gave a lot of things to them, so I also felt like offering it to my sister or her children, but it was very difficult. They beat me each time. First, I was beaten to get a television from my mother, so she gave money. They took the money. They broke everything of mine, iron, dressing table mirror, TV. Everything was ruined. I was in deep pain. I cried a lot. When I went home, they checked my bag to see if I had money. Mother-in-law asked my husband to check and he checked whatever was there in the bag, to take away with him. I was not allowed to lock the almirah. Once I locked it, mother-in-law broke the lock and took out everything. My ironed clothes, lipstick, bangle, everything was misplaced and turned upside down. When I came back from the office, I saw the whole almira opened with a broken lock.

Whatever my mother had given to me, like bedsheets etc., all was taken by them. I had nothing. Earlier I used to tell my mother, but now I asked her not to give me anything. Even if she wanted to give me some money, I asked her to give it to me separately, I would deposit it in my bank account. No need to give anything at my in-laws; place, they only used it for themselves⁴⁰⁴.

– Married woman with hearing impairment, New Delhi

Questions/Discussion

How can demand for dowry and economic abuse render Women with Disabilities vulnerable to economic violence, as compared to their non-disabled counterparts?

11.6 Accessibility

Creating accessible spaces for persons with disabilities has been integral to disability rights movements around the world. This includes not just the removal of architectural and

⁴⁰⁴ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)'

other design barriers, but also accessibility to information, education, technology etc. While reservations and promotions of other affirmative action schemes in education and employment are much needed, they ultimately serve no purpose if persons with disabilities cannot access the institutions. Most public establishments, including healthcare facilities, are designed with the needs of the non-disabled in mind. Making these establishments accessible is fundamental to the empowerment of persons with disabilities, and specifically women with disabilities, who are doubly marginalized.

I was looking for an Institute which is accessible. So, I went to this institute and they told me that all the classes are on the ground floor only and they made me pay the entire fee in lump sum. Just after 4-5 days of classes, they shifted the classes somewhere else, which was either second floor, or in the basement. Due to so many steps, I kept on complaining to them, but they said that this was how they conducted classes. I told them if they were only interested in taking the payment from me, they could have taken that anyway, why did they do it this way? I asked them so many times, like four times, if there was any lift or not, as I didn't want to depend on anyone, but myself. In the end, I had to leave that coaching because there was nothing given in writing by them about the place being totally accessible. So, I had this one bad experience⁴⁰⁵.

– 32-year-old PhD student in New Delhi

International human rights law as well as domestic legislations such as the Rights to Persons with Disabilities Act 2016 recognizes the importance of accessible spaces.

Section 10 of the Act states that the government must ensure persons with disabilities have full access to information about reproductive health and family planning.

Sections 11 and 12 provide for access to polling stations and materials related to the electoral process, as well as access to courts, tribunals and other judicial or quasi-judicial authorities so that persons with disabilities can exercise their legal rights and obtain justice. Section 12 further requires the government to ensure that all public documents are in accessible formats.

Section 41 mandates governments to take suitable measures for ensuring accessible facilities to persons with disabilities in matters of public transportation, such as by retrofitting vehicles and providing mobility assistance.

Section 45 states that **all existing public buildings must be made accessible** within a time stipulated by the Central Government. The Accessible India Campaign has also been launched to achieve universal accessibility.

⁴⁰⁵ Women's Fund Asia – Center for Women's Development Studies, New Delhi fieldwork leading from the South Project 'Violence against Women and Girls with Physical Disabilities in India: Understanding the Issues and Promoting Legal Empowerment (2017-19)'

Hypothetical

I. Martha is a 24-year-old woman with loco-motor impairment living in Kochi. Her parents arranged her marriage with Chris, the son of the local priest of their village. Chris said that a marriage to him would give Martha a chance at a full life, and insisted on monthly provision of food grains and groceries by her parents to ensure the marriage. Her parents have been providing the same for two years. Recently, Chris compelled Martha to work as a sale-attendant of candles at the local church. The church is located atop a hill, which can be accessed only by a flight of stairs. Every day, Martha's sister Margaret, assists her to climb the stairs and access her spot behind the counter. The washrooms are located at the base of the staircase, and to access the same, Martha is compelled to phone her sister to do the same. Martha wishes to file a two-pronged complaint, first at the family court against her husband, and second, with the Kochi municipality. Identify the issues to assist her.

Conclusion

The framework of disability rights legislation has strong safeguards for women with disabilities, in all aspects of life. Women with disabilities have the right to inherit as well as own property and claim maintenance. They are entitled to the same social security benefits as non-disabled persons, as well as special benefits from government schemes, such as having the status of priority household for food rations and reasonable accommodations in education and employment. The Constitution along with domestic and international laws protects the right to access medical facilities and be provided information about sexual and reproductive healthcare. Finally, women with disabilities have the right to be free of all exploitation and interpersonal violence.

However, it is important to note that in practice, many of these rights are inaccessible and the laws are yet to be enforced. While the Constitutional and legislative frameworks in India have some strong guarantees for disability rights, public institutions have neglected to make accommodations for women with disabilities. Also, the majority of these laws do not apply to the private sector. Despite the Disabilities Act and various Supreme Court directives, institutions continue to deny reasonable accommodations for persons with physical and intellectual disabilities. Most schools do not have the necessary resources for children with disabilities, putting education out of reach for millions. This is also the situation in universities, health facilities, employment sector, transport et al.

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12. Institutional Violence

Neha S Chaudhry⁴⁰⁶

Objectives

The module aims to explain:

- The different provisions that concern individuals residing in/attending institutions as contained in different disability-specific laws like Rights of Persons with Disabilities Act 2016, Mental Health Care Act 2017, Rehabilitation Council of India 1993 (RCI Act 1993);
- The major provisions and process of litigation under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013 (POSH).

12.1 Introduction

Disability and institutionalization have been historically connected because people suffering from various types of disabilities have been segregated in special institutions, particularly in western countries since the 18th century. Mental hospitals, leprosaria, poor houses, alms houses, orphanages, reform homes etc. have at different times been places where disabled people have been kept. This practice continues even today, although the living conditions in such establishments have been made more humane. Individuals living in such institutions may often be deprived of their legal rights. And when this is combined with the association of disability and legal incapacity, then the plight of such individuals can result in the violation of their fundamental and basic human right. That is why disability laws like the RPWD Act 2016, the Mental Healthcare Act 2017 and the Rehabilitation Council of India Act 1993 have specific provisions to safeguard the welfare of residents with disabilities in institutions. These provisions will be discussed in this module.

Another site of violation of rights is the workplace where Persons with Disabilities may be subject to both disability based and sexual harassment. For example a deaf person may be mocked for not being able to understand conversation or a visually challenged person may not be helped to go to the washroom. Both these acts constitute disability based harassment but there is no legal provision to address them. On the other hand sexual harassment at work places has a legal redressal mechanism of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013.

Sexual harassment at workplace is a form of gender discrimination as it violates the fundamental rights of women: right to equality and dignity guaranteed under Articles 14 of the constitution. Harassment at workplace creates a hostile and an insecure work environment for

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women and adversely affects their capacity to work. Further it affects their physical, emotional and social growth.

A *Handbook on Sexual Harassment of Women at Workplace*⁴⁰⁷ states that sexual harassment of women has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment. Often, various forms of such harassment are viewed as harmless and trivial, excused as ‘natural’ male behavior or ‘harmless flirtation’ which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace. Not only is it an infringement of the fundamental rights of a woman, under Article 19(1) (g) of the Constitution of India “to practice any profession or to carry out any occupation, trade or business”, it erodes equality and puts the dignity and the physical and psychological well-being of women workers at risk. This leads to poor productivity and a negative impact on lives and livelihoods. To further compound the matter, deep-rooted socio-cultural behavioral patterns, which create a gender hierarchy, tend to place responsibility on the victim.

Globalization has led to influx of women in some sectors of the mainstream workforce and as a result the issue of Sexual Harassment of women at Workplace has gained much attention. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was enacted in 2013 (POSH Act). The objective of the Act was to prevent and protect women against any form of sexual harassment at workplace and provide them with a sense of security. A safe workplace is a woman's legal right including that of a woman with disabilities.

Although the work participation rates of Women with disabilities may be lower in comparison to their non-disabled counterparts, yet their vulnerability to workplace related abuse is much higher since they experience the double burden of both disability specific and gender specific abuse. That is why it is very important for women with disabilities to be aware of the basic provisions of the POSH.

Even though today the issue of sexual harassment at workplace is recognized as a violation of fundamental rights of women, it is important to note that there are women who do not report the cases in the fear of losing the job, being stigmatized so on and so forth.

The very first time when sexual harassment at workplace was ever recognized by the Supreme Court of India was in its landmark judgement of Vishakha vs. State of Rajasthan (The Vishakha Judgment⁴⁰⁸, 1992). In the absence of a specific law the Supreme Court framed guidelines and directions to the union of India to enact an appropriate law for combating harassment at workplace.

⁴⁰⁷Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 for Employers/ Institutions/ Organizations/ Internal Complaints Committee/ Local Complaints Committee, Government of India, Ministry of Women and Child Development, November 2015, p. 1 [hereafter referred to as ‘handbook’]

⁴⁰⁸ The Vishakha Judgment: <https://www.prsindia.org/uploads/media/Sexual%20Harassment/Vishaka.pdf> last accessed on 5 February ‘19

Redressal for Violation of Human Rights of Persons with Disabilities in Institutions

12.2 RPWD Act 2016

In the Rights to Persons with Disabilities Act 2016, Section 15 talks about designation of appropriate authorities to provide support to Persons with Disabilities. These authorities will be responsible for setting up suitable support arrangements, thus enabling disabled persons living in institutions to exercise their legal rights. These institutions, according to Section 2 of the Act, mean ‘institutions’ for the reception, care, protection, education, training, rehabilitation and any other activities for persons with disabilities. The guidelines of registration of these institutions and revocation of the same are given under Chapter 9⁴⁰⁹ of this Act.

Among other rights that the RPWD Act 2016 lays down, given below are the specific sections that refer to rights at the disposal of persons with disabilities in case of any violation of their rights:

Section 7: Protection from abuse, violence and exploitation⁴¹⁰

The appropriate Government shall

- (1) take measures to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent the same;
 - (a) take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents;
 - (b) take steps for avoiding such incidents and prescribe the procedure for its reporting;
 - (c) take steps to rescue, protect and rehabilitate victims of such incidents; and
 - (d) create awareness and make available information among the public.
- (2) Any person or registered organisation who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed, against any person with disability, may give information about it to the Executive Magistrate within the local limits of whose jurisdiction such incidents occur;
- (3) The Executive Magistrate on receipt of such information, shall take immediate steps to stop or prevent its occurrence, as the case may be, or pass such order as he deems fit for the protection of such person with disability including an order—
 - (a) to rescue the victim of such act, authorising the police or any organisation working for persons with disabilities to provide for the safe custody or rehabilitation of such person, or both, as the case may be;

⁴⁰⁹Chapter 9 of Rights of Persons with Disabilities Act 2016. The document can be found at <http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/RPWD%20ACT%202016.pdf>

⁴¹⁰The Rights of persons with Disabilities Act, 2016, No. 49 of 2016, Ministry of Law and Justice, 28 December 2016/PAUSHA 07, 1938 (SAKA), The Gazette of India, p. 5-6
(<http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/RPWD%20ACT%202016.pdf>)

- (b) for providing protective custody to the person with disability, if such person so desires;
 - (c) to provide maintenance to such person with disability.
- (4) Any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any person with disability shall inform the aggrieved person of—
- (a) his or her right to apply for protection under sub-section (2) and the particulars of the Executive Magistrate having jurisdiction to provide assistance;
 - (b) the particulars of the nearest organisation or institution working for the rehabilitation of persons with disabilities;
 - (c) the right to free legal aid; and
 - (d) the right to file a complaint under the provisions of this Act or any other law dealing with such offence:

Provided that nothing in this section shall be construed in any manner as to relieve the police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

- (5) If the Executive Magistrate finds that the alleged act or behaviour constitutes an offence under the Indian Penal Code, or under any other law for the time being in force, he may forward the complaint to that effect to the Judicial or Metropolitan Magistrate, as the case may be, having jurisdiction in the matter.

Section 20: Non-discrimination in Employment⁴¹¹

- (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

- (2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.
- (3) No promotion shall be denied to a person merely on the ground of disability.
- (4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may

⁴¹¹Ibid., p. 9

be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

- (5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.

Section 23: Appointment of Grievance Redressal Officer⁴¹²

- (1) Every Government establishment shall appoint a Grievance Redressal Officer for the purpose of section 19 and shall inform the Chief Commissioner or the State Commissioner, as the case may be, about the appointment of such officer.
- (2) Any person aggrieved with the non-compliance of the provisions of section 20, may file a complaint with the Grievance Redressal Officer, who shall investigate it and shall take up the matter with the establishment for corrective action.
- (3) The Grievance Redressal Officer shall maintain a register of complaints in the manner as may be prescribed by the Central Government, and every complaint shall be inquired within two weeks of its registration.
- (4) If the aggrieved person is not satisfied with the action taken on his or her complaint, he or she may approach the District-Level Committee on disability.

Offences and Penalties⁴¹³

Chapter XVI of the RPWD Act 2016 lays down the punishment for contravention of provisions of Act or rules or regulations made thereunder

Section 89: Punishment for contravention of provisions of Act or rules or regulations

Any person who contravenes any of the provisions of this Act, or of any rule made thereunder, shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Section 90: Offences by Companies

- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without

⁴¹²Ibid., p. 10

⁴¹³Ibid., p. 28-29

his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation—For the purposes of this section,

- (a) “company” means any corporate body and includes a firm or other association of individuals; and
(b) “director”, in relation to a firm, means a partner in the firm.

Section 91: Punishment for fraudulently availing any benefit meant for persons with benchmark disabilities

Whoever fraudulently avails or attempts to avail any benefit meant for persons with benchmark disabilities, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both.

Section 92: Punishment for offences of atrocities

Whoever— (a) intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view;

- (b) assaults or uses force to any person with disability with intent to dishonour him or outrage the modesty of a woman with disability;
- (c) having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to him or her;
- (d) being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually;
- (e) voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability;
- (f) performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

Section 93: Punishment for failure to furnish information

Whoever fails to produce any book, account or other documents or to furnish any statement, information or particulars which, under this Act or any order, or direction made or given thereunder, is duty bound to produce or furnish or to answer any question put in pursuance of the provisions of this Act or of any order, or direction made or given thereunder, shall be punishable with fine which may extend to twenty-five thousand rupees in respect of each offence, and in case of continued failure or refusal, with further fine which may extend to one thousand rupees for each day, of continued failure or refusal after the date of original order imposing punishment of fine.

Section 94: Previous sanction of appropriate Government

No Court shall take cognizance of an offence alleged to have been committed by an employee of the appropriate Government under this Chapter, except with the previous sanction of the appropriate Government or a complaint filed by an officer authorised by it.

Section 95: Alternative punishments

Where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any other law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

Questions/Discussion

What are section 7, section 20 and section 23 of the RPWD Act?

Name some of the penalties listed in chapter XVI of the RPWD Act 2016.

What are the alternative punishments listed in the RPWD Act 2016?

12.3 Mental Healthcare Act 2017

The Mental Healthcare Act 2017 talks specifically about the rights and entitlements of Persons with Intellectual Disabilities and Mental Illnesses. Section 27 of the Act maintains that Persons with Mental Illness are entitled to receive free legal services. This piece of information should be given to them by the concerned magistrate, police officer or the person in charge of custodial institution. In these institutions (including beggars homes, orphanages, women's protection homes and children homes) if it is found by the person in-charge that any of the residents has mental illness, then he/she should be taken to the nearest mental health establishment run or funded by the Government for assessment and treatment. Then the medical officer in-charge of the mental health establishment shall be responsible for taking care of the treatment of such persons. This provision for assessment and treatment is mentioned under the Section 104 of the Act.

Questions/Discussion

What are the institutional mechanisms available for legal redressal for Persons with Disabilities?

12.4 Rehabilitation Council of India

The Rehabilitation Council of India (RCI) was set up as a registered society in 1986. On September, 1992, the *Rehabilitation Council of India Act (RCI Act)* was enacted by Parliament and it became a statutory body on 22 June 1993. The Act was amended by Parliament in 2000 to make it more broad based. The mandate of RCI is to regulate and monitor services given to persons with disability, to standardise syllabi and to maintain a Central Rehabilitation Register of all qualified professionals and personnel working in the field of rehabilitation and special education. The Act also prescribes punitive action against unqualified persons delivering services to persons with disability⁴¹⁴.

Rehabilitation Council of India has been making continuous effort to improve the standard of Rehabilitation and Special Education Professionals through quality curriculum delivered through training institutions approved by the Council. The Council looks for both qualitative as well as quantitative growth of training institutions in the country. It also maintains the Central Rehabilitation Register for qualified professionals / personnel in the area of rehabilitation and special education and promotes research in Rehabilitation and Special Education⁴¹⁵.

For approving a course to any training institution, the Council ensures the feasibility of such institution in offering the required course having adequate faculty and resources. Hence the Council undertakes assessment and inspection of training institutes in a systematic and scientific manner. The Council keeps on modifying/revising the existing syllabi and adopts new training programmes incorporating new developments. The Act also prescribes that anyone delivering services to people with disability, who does not possess qualifications, recognized by RCI could be prosecuted⁴¹⁶.

If one is to ask whether RCI per se offers any service to people with disability, the answer would be NO. The RCI is a regulatory body responsible for standardization of curriculum, research and development, training and manpower development, recognition of institutions offering various courses on rehabilitation of the disabled and registration of rehabilitation professionals/ personnel. It is responsible for ensuring development and implementation of standard operating procedures to guarantee protection of legal rights of Persons with Disabilities.

RCI trains master trainers, rehabilitation professionals and personnel for creating better

⁴¹⁴ The Rehabilitation Council of India (RCI): <http://www.rehabcouncil.nic.in> last accessed on 6 February' 19

⁴¹⁵ Manual on Assessment of Training Institutions (Revised Guidelines & Inspection Report for Assessment of New & Extension Proposal w.e.f. 2018- 19 Academic Session), Rehabilitation Council of India, February 2018, p. 2

⁴¹⁶ Information Handbook Under Right of Information Act, 2005, Rehabilitation Council of India, p. 14

service delivery facilities for the persons with disability. However, it does not offer any direct benefit, financial or material help to the persons with disability.

To avail rehabilitation services for any person with disability, the individuals may contact the Ministry of Social Welfare or Ministry of Disability Welfare/ Commissioner of Disability in their respective states or the Secretary, Ministry of Social Justice & Empowerment.

In case of a grievance of any kind relating to persons with disability, one can seek redressal under Rights of Persons with Disabilities Act 2016. This Act provides for redressal of grievances by the office of the State Commissioner of Disability or Chief Commissioner of Disabilities, Govt. of India.

12.4.1 Provisions of punishment for offences committed by Disability Professionals under the RCI ACT

Chapter II of the RCI Act provides for the constitution and incorporation of the RCI. It lays down the number of members, term of members, qualification criteria and dissolution of the RCI among other things. Chapter III enumerates the various functions of the RCI; one such function is the enrolment of the professionals, possessing the required qualifications, on the Central Rehabilitation Register, this is provided under Section of the RCI Act. Subsection 3 of Section 13 provides that any rehabilitation professional who enrolls and/ or practices in contravention to Section 13(2) shall be punished with an imprisonment which may extend to one year or with fine which may extend to Rs.1000.

Section 21 of the RCI Act deals with professional misconduct and the removal of names of Rehabilitation Professionals from the Central Rehabilitation Register. This Section provides that the RCI may prescribe standards of professional conduct and etiquette and a code of ethics violation of which will constitute professional misconduct. Further, such persons who violate such codes will be struck off from the Central Rehabilitation Register, after being given a reasonable opportunity to be heard. Such persons whose names are removed shall be ineligible for registration under this RCI Act either permanently or as specified by the Council. Any such complaint has to be given, in writing, by a person authorized in this behalf by the RCI.

The RCI, under Section 29 of the RCI Act, has the power to makes regulations regarding the standards of professional conduct and etiquette and code of ethics to be observed by Rehabilitation Professionals. The Rehabilitation Council of India (Standards of Professional Conduct, Etiquette and Code of Ethics for Rehabilitation Professionals) Regulations, 1998 (hereinafter referred to as “**1998 Regulations**”⁴¹⁷) thus provides for the kind of unprofessional conduct that can cause for removal of names of rehabilitation professionals from the Central Rehabilitation Register. The phrase “sexual misconduct” isn’t used in the 1998 Regulations or the RCI Act; However, under regulation 11 of the 1998 Regulations any professional who is involved in “any indecent act” or “maintains improper or elicit relations with any person with disability”, “makes use of harsh and rough language with any person with disability”, “takes any undue advantage from the mental or physical affliction of a person with disability”, among

⁴¹⁷ Available at: http://www.rehabcouncil.nic.in/writereaddata/1998_english.pdf, Pg 4-6

other things, shall be declared as professional of infamous conduct. Though there aren't cases filed under this particular provision of law, available in the public domain. There are some cases that are in reference to other kinds of misconduct such as forging of entries in the daily records (*S.P. Parasher v. Rehabilitation Council of India*⁴¹⁸). Furthermore, in the case of *K Shoukkathali v. The Registrar*⁴¹⁹ the Karnataka High Court dismissed a writ petition in connection with assault of a 12 year old girl by the petitioner who was in a department of clinical psychology. The girl was his patient and was being treated in a hospital for a possible psychological disorder. The petition refers that the accused had followed the "norms laid down by the Rehabilitation Council of India". However, this case does not refer to the 1998 Regulations or the RCI Act. As is apparent, though on paper there seem to be some legal provisions in praxis, however, these provisions seem to be absent.

12.5 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)

12.5.1. Genesis of the POSH Act

This section will explore the genesis of the law against Sexual Harassment of Women at Workplace and how it came into existence. In 1992 a Dalit woman, Bhanwari Devi, was employed with the Rural Development Programme of the Government of Rajasthan. During the course of her work, she tried to curb the then prevalent practice of child marriage⁴²⁰. Men belonging to the higher caste of the community however did not take this well and began to threaten and harass her. Bhanwari Devi reported the threats to the local authorities but she was not given any protection. This took a dreadful turn when she was gang raped by the very men belonging to a higher caste of the community who were threatening her.

The Bhanwari Devi case revealed the ever-present sexual harm to which millions of working women are exposed across the country, everywhere and everyday irrespective of their location. It also shows the extent to which that harm can escalate if nothing is done to check sexually offensive behaviour in the workplace.

Based on the facts of Bhanwari Devi's case, a Public Interest Litigation (PIL) was filed by Vishakha and other women's groups against the State of Rajasthan and Union of India before the Supreme Court of India. It proposed that sexual harassment be recognized as a violation of women's fundamental right to equality and that all workplaces/establishments/institutions be made accountable and responsible to uphold these rights⁴²¹.

⁴¹⁸ WP(c) No. 12272/2009 decided on 23 September 2011 at the Delhi High Court, available at: <https://indiankanoon.org/doc/197482081/>

⁴¹⁹ WP No.13004 OF 2010 decided on 12 November 2013 at the High Court of Karnataka at Bangalore, available at: <https://indiankanoon.org/doc/58218585/>

⁴²⁰ Indira Jai Singh, Law Relating to Sexual Harassment at the Workplace (2014) as cited in India's Law on Prevention of Sexual Harassment at the Workplace, Nishith Desai Associates: Legal and Tax Counselling Worldwide, October 2018, pp. 2

http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf. Last accessed on 5 February' 19 [hereafter referred to as 'nishith desai associates']

⁴²¹ Handbook, p.3-4

In a landmark judgment, *Vishakha vs. State of Rajasthan (1997)*⁴²², the Supreme Court of India created legally binding guidelines based on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

It included:

- A definition of sexual harassment
- Shifting accountability from individuals to institutions
- Prioritizing prevention
- Provision of an innovative redress mechanism

Varun Malik⁴²³ in his critique of the Sexual Harassment law⁴²⁴ writes, “*In the aftermath of the incident, various NGOs under the banner of ‘Vishakha’ with an aim of ensuring gender justice at workplaces and doing away with sexual harassment at workplaces, filed a writ petition in the Supreme Court of India alleging that such practices violate Article 14 (right to equality), Article 21 (right to live with dignity) and Article 19(1)(g) (right to freely profess any occupation)*⁴²⁵ of the constitution⁴²⁶. The Court, accepting the claim of the petitioners, held that in absence of a domestic law on the topic, international instruments are significant enough to ensure gender equality in the workplace and to ensure that every woman is perceived as a dignified person at the workplace⁴²⁷.”

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work (whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.’

⁴²⁸

The Act placed responsibility on employers to ensure that women did not face a hostile environment, and prohibited intimidation or victimization of those cooperating with an inquiry,

⁴²²(AIR 1997 Supreme Court 3011) as cited in the Handbook, p. 4

⁴²³ The author is Assistant Professor of Law at the National Academy of Legal Studies and Research (NALSAR) University of Law

⁴²⁴Varun Malik, *A Deliberate Critique to Sexual Harassment Laws in India*, 4(1), NLUJ Law Review 46 (2017), p. 49

⁴²⁵ India’s Law on Prevention of Sexual Harassment at Workplace (May 1, 2017), as cited in http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf. Last accessed on 5 February’ 19

⁴²⁶India Constitution. art.14, 21 and 19(1)(g)

⁴²⁷Vishakha case, *supra* note 3, ¶ 7.

⁴²⁸From Nishith Desai Associates, p. 2-3

including the affected complainant as well as witnesses.

It directed for the establishment of redressal mechanism in the form of Complaints Committee, which will look into the matters of sexual harassment of women at workplace. The Complaints Committees were mandated to be headed by a woman employee, with not less than half of its members being women, and provided for the involvement of a third party person/NGO expert on the issue, to prevent any undue pressure on the complainant. The guidelines extended to all kinds of employment, from paid to voluntary, across the public and private sectors.

Vishakha established that international standards/law could serve to expand the scope of India's Constitutional guarantees and fill in the gaps wherever they exist. India's innovative history in tackling workplace sexual harassment beginning with the *Vishaka* Guidelines and subsequent legislation has given critical visibility to the issue. Workplaces must now own their responsibility within this context and ensure that women can work in safe and secure spaces⁴²⁹.

12.5.2 Provisions of the POSH Act

The POSH Act defines 'sexual harassment' in line with the Supreme Court's definition of 'sexual harassment' in the Vishakha judgment. This section further lays down the definition of sexual harassment at workplace, an aggrieved woman, workplace, and employee and also highlights other key elements of the Act.

The Definition of Sexual Harassment

According to the POSH Act 2013, sexual harassment is defined as an unwelcome behavior such as any physical contact or advances, demand for sexual favors, sexually colored remarks or any verbal or non-verbal conduct of sexual nature.

Aggrieved Woman

The POSH Act defines an 'aggrieved woman' as a woman of any age, whether employed or not, whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer, who alleges to have been subjected to any act of sexual harassment. The Act also covers a woman who is working in a dwelling place or house⁴³⁰. An important aspect of this law is that it is not gender neutral -- it doesn't provide protection to men.

Workplace

The POSH act defines workplace as any place visited by the employee during the course of employment, including transportation provided by the employer for undertaking such a

⁴²⁹Handbook, p. 4

⁴³⁰Handbook, p. 7

journey. In its definition of ‘workplace’, the POSH Act covers organised and unorganised sectors (workplace that employs less than 10 employees), government organizations, private sector organisations, whether owned by Indian or foreign company having a place of work in India.

Employee

The POSH Act defines an ‘employee’ as an individual who is either a regular/ temporary/ ad hoc/ individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise.

Monitor & Penalty

Monitor: The Act authorizes an appropriate government ⁴³¹ to monitor the implementation of the Act. Monitoring is a way to ensure that the Act has been complied with. In order to monitor the implementation of the Act, the appropriate government can order the complainant and the respondent or the District Officer to make available any information, record, document for inspection. It could also order for inspection of the workplace.

Besides, appropriate government also maintains data on the number of cases filed and disposed under it. It’s the duty of the District Officer to send a brief report on the annual reports to the appropriate government. The report should consist of data on the number of complaints received, complaints disposed of, complaints pending for more than 90 days, workshops carried out for awareness, actions taken by the employer or the district office.

Penalty: The POSH Act prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment:

- i. punishment prescribed under the service rules of the organization;
- ii. if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service;
- iii. deduction of compensation payable to the aggrieved woman from the wages of the respondent⁴³².

⁴³¹As per the Act, Appropriate Government means:

In relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly-

By the Central Government or the Union Territory administration, the Central Government; ^[1]_[SEP]

By the State Government, the State Government; ^[1]_[SEP]

In relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government; ^[1]_[SEP]

⁴³²Section 13 of the Prevention of Workplace Sexual Harassment Act as cited in Nishith Desai Associates, p.12

The POSH Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:

- i. the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- ii. the loss in career opportunity due to the incident of sexual harassment;
- iii. medical expenses incurred by the victim for physical/ psychiatric treatment;
- iv. the income and status of the alleged perpetrator;
- v. feasibility of such payment in lump sum or in instalments⁴³³;
- vi. In the event that the respondent fails to pay the aforesaid sum, ICC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

Complaints Committees

It's important to emphasize at this point that the experience of sexual harassment at workplace is very subjective and each experience is unique in its own way therefore it is important to address them in their respective context. Because the experience is subjective, the impact of it matters irrespective of the intent behind such behaviour, as it happens in a close grid of power.

The act envisages a mandatory setting up of redressal platform. Every employer is obliged to set up two types of committees to hear and redress grievances pertaining to Sexual Harassment at workplace, namely **a) Internal Complaints Committee, b) Local Complaints Committee**. It is important to emphasize that if the office of a particular employing firm is situated at multiple locations, it's mandatory under the Act to set up ICC at every location.

Each committee must have 50 percent representation of women. The term of members in the ICC or LCC is 3 years from the date of appointment.

a) Internal Complaint Committee (ICC)

Section 4 of the POSH Act 2013, makes it mandatory for all workplaces to constitute ICC, by order in writing, for receiving complaints of sexual harassment. If any employer fails to constitute an ICC, he shall be punishable with fine which may extend to fifty thousand rupees. A repetition of the same offence could result in the punishment being doubled and/or de-registration of the entity, or revocation of any statutory business licenses. It is however unclear as to which business licenses are being referred to in this case⁴³⁴. It is also pertinent to note that all offences under POSH Act are non-cognizable⁴³⁵.

The ICC should consist of women members (not less than half of the ICC members) who are trained in the roles and responsibilities under the POSH Act and POSH rules. The term of

⁴³³Section 15 of the Prevention of Workplace Sexual Harassment Act as cited in Nishith Desai Associates, p. 12

⁴³⁴Section 26 of the Prevention of Workplace Sexual Harassment Act as cited in Nishith Desai Associates, p.13

⁴³⁵Section 27 of the Prevention of Workplace Sexual Harassment Act as cited in Nishith Desai Associates, p. 13

the ICC members shall not exceed 3 years. A minimum of 3 members of the ICC including the Chairperson/ Presiding Officer are to be present for conducting the inquiry. The constitution of ICC is as follows:

Chairperson/ Presiding Officer	Women working at senior level as employee; if not available then nominated from other office/ units/ department/ workplace of the same employer
Members (minimum 2)	From amongst employees committed to the cause of women/ having legal knowledge/ experience in social work
External Member	From amongst NGO/ associations committed to the cause of women or a person familiar with the issue of Sexual Harassment

b) Local Complaint Committee (LCC)

At the district level, the District Officer is required to set up a 'Local Complaint Committee (LCC) to address, investigate and redress complaints of sexual harassment of women in the unorganised sectors or in small establishments where there are less than 10 workers or if the perpetrator is the employer itself. LCC is especially relevant in case of domestic workers or where the complaint is against the employer or a third party who is not an employee⁴³⁶. The constitution of LCC is as follows:

Chairperson	Nominated from amongst the eminent women in the field of social work and committed to the cause of women
Local Woman	Nominated from amongst the women working in block, taluka, tehsil or ward or municipality in the district
NGO members	Nominated from amongst NGO or associations committed to the cause of women or familiar with the issues related to sexual harassment, provided: <ul style="list-style-type: none"> - At least one member should have a background in law - At least one of the members should be a woman belonging to Scheduled Caste/ Scheduled Tribes/ OBC/ minority community notified by the central government
Ex- Officio member	Nominated from amongst people who work for social welfare or women and child development in the district.

There is a criterion for External Members on the Complaint Committee/s. The concerned

⁴³⁶ India's Law on Prevention of Sexual Harassment at Workplace, Nishith Desai Associates: Legal and Tax Counselling Worldwide, October 2018

member should be ‘person who is familiar with issues pertaining to sexual harassment at workplace. The concerned member should at least have a 5-year expertise as a social worker, working towards women empowerment and in particular addressing sexual harassment. The concerned member should also have a sound grasp and practice of the legal aspects and implications.

c) Power and Duties of the Committee⁴³⁷

The committee is NOT to act as a moral police; neither will it intrude on anyone’s privacy. The role of the Committee is to create awareness about sexual harassment and to deal with and recommend punishment for non-consensual acts of sexual harassment, and not to curtail sexual expression within the campus. Members are expected to be sensitive to the issue and not let personal biases and prejudices (whether based on gender, caste, class) and stereotypes (e.g., predetermined notions of how a “victim” or “accused” should dress up or behave) affect their functioning as members of the committee. It is the duty of the committee to create and ensure an environment free of sexual harassment including safety from visitors coming into contact at the workplace.

The committee is also endowed with the responsibility of creating awareness about issues of gender and sexuality and working towards and creating an enabling environment of gender justice where all can work together with a sense of personal security and dignity. Sensitization and creating awareness is a basic function of the Committee formed.

The POSH act stipulates that the ICC and LCC shall have the same powers as vested in civil court under the Code of Civil Procedure, 1908, while inquiring into a complaint of sexual harassment at workplace⁴³⁸.

Redressal Process

a) Who can complain? And where?

The complainant can directly approach the Complaint Committee to register her complaints. However, it is crucial to take note of the fact that if the complainant is unable to register her complain for any reason, such as on the grounds of disability (physical and mental), death (i.e. the complainant dies) or for any other reason, even then the complaint can be registered and pursued for justice.

In case of physical incapacity - the complaint can be registered by the aggrieved woman’s relative, friend, co-worker or any person who has complete knowledge of the incident provided he/ she has a written consent of the aggrieved woman.

⁴³⁷ Policy Document of Internal Complaint Committee to Prevent Sexual Harassment of Women at Workplace, Guidelines for International Institute For Population Sciences (IIPS), Mumbai, 2016, p. 7-9

⁴³⁸ Nishith Desai Associates, p. 10

In case of mental incapacity - the complaint can be registered by the aggrieved woman's relative, friend, special educator, qualified psychiatrist/ psychologist, guardian under whose care the woman is receiving care/ treatment or any person who has complete knowledge of the incident along with any person mentioned earlier.

In case the aggrieved woman dies - any person who knows about the incident can register a complaint provided he/ she has a written consent of the legal heir of the aggrieved woman.

In case the aggrieved woman is unable to file a complaint for any other reason - the complaint can be registered by someone who has knowledge of the incident, with the aggrieved woman's consent.

b) Contents of the complaints

The complaint should be addressed to the ICC/ LCC. The complainant has to give six copies of written complaints to the ICC/ LCC within 3 months from the date of the incident. If there has been more than one incident, then the complaint should be reported within 3 months of the last incident. The complaint should contain full description of the incident/ incidents. The relevant details like the name of the aggrieved woman, date, time, place, working relationship between the complainant and the respondent and names of witness/ witnesses (if any). The complaint should be precise and in simple language. A person designated to manage the sexual harassment complaints can provide assistance to the complainant in writing the complaint.

c) Rights of the Complainant and the Respondent

Once the complaint is submitted to the Complaint Committee, the complainant and the respondent both have certain rights throughout the inquiry process.

Rights of the Complainant: The complainant has the right to have a copy of the statement, evidence and the list of witnesses as reported by the respondent. Confidentiality is the utmost priority. Therefore, the identity of the complainant has to be kept confidential throughout the process. In case the complainant is fearful of the respondent, her statements can be recorded in the respondent's absence. The ICC/ LCC have to extend support to the complainant in filing FIR if she wants to lodge criminal proceedings and she also has the right to appeal if she is not satisfied with the findings of the Complaint Committees.

Rights of the Respondent: The most important one is the right to be heard without any bias. The respondent also has the right to get a copy of the statement submitted by the complainant along with the list of witnesses. The respondent's identity is also confidential and he / she has the right to appeal further if not satisfied with the recommendations of ICC/ LCC.

Given that most workspaces today are gender unequal and male-dominated, it is important that complaints by women be treated fairly and not dismissed. The mere inability to substantiate a complaint or provide adequate proof will not attract legal action against the complainant. However, making a false or malicious complaint or producing a forged or

misleading document is an offence⁴³⁹.

In order to ensure that the protections envisaged under the POSH Act are not misused, provisions for action against “false or malicious” complainants have been included in the statute. As per the POSH Act, if the ICC/ LCC concludes that the allegation made by the complainant is false or malicious or the complaint has been made knowing it to be untrue or forged or misleading information has been provided during the inquiry, disciplinary action in accordance with the service rules of the organisation can be taken against such complainant. The POSH Act further clarifies that the mere inability to substantiate a complaint or provide adequate proof need not mean that the complaint is false.

d) Conciliation

After the complaint has been registered the complaint committee can try to settle the matter between the parties through conciliation. It is an informal way of resolving the issue prior to a formal inquiry. Once the issue has been settled informally through conciliation and a settlement is arrived at, the Complaint Committee must record the settlement and give a copy each to the complainant and the respondent.

Inquiry Process

Dealing with the complaints of sexual harassment at workplace is often too complex. Therefore, a sound grasp of the POSH act is a must for the ICC/ LCC. Once the complaint has been registered with the Complaint Committees, ICC/ LCC should gather all the relevant information, conduct necessary interviews, assure confidentiality, analyse the information gathered, carry out a fair and informed inquiry and prepare a report with its findings.

An inquiry must be completed within 90 days and a final report submitted to the Employer or District Officer (as the case may be) within ten days thereafter. Such report will also be made available to the concerned parties. The Employer or District Officer is obliged to act on the recommendations within 60 days.

Any person not satisfied with the findings or recommendations of the Complaints Committee or non-implementation of the recommendations, may appeal in an appropriate court or tribunal, as prescribed under the Service Rules or where no such service rules exist, in such manner as may be prescribed⁴⁴⁰.

Interim Measures

While the complaint has been registered with the Complaint Committees, there are some interim measures that can be recommended to the respondent by ICC/LCC on the request of the complainant. One of the measures is to transfer the complainant to other workplace and

⁴³⁹Handbook, p. 34

⁴⁴⁰Handbook, p.28- 29

refrain the respondent to comment on the work performance of the complainant. The complainant is entitled a leave up to 3 months in addition to the regular contractual leave.

Questions/ Discussion

- What factors led to the formulation of Vishakha guidelines?
- What are the salient features of Vishakha guidelines?
- What is the definition of Sexual Harassment in POSH Act? Does it cover all the violations that a woman with disabilities may experience?
- How should the Internal Complaints Committee be constituted to address the concerns of Women with Disabilities? In your understanding is the process of redressal of Sexual Harassment at Workplace adequate to address the violations that a Women with Disabilities experiences?

Conclusion

To sum up legally, workplace sexual harassment can no longer be dismissed as some moral transgression. The Vishakha Guidelines raised that bar, when for the first time it recognized “each incident of sexual harassment” as a violation of the fundamental right to equality. That notion has found its way into the Act, which promotes the right of women as citizens to a workplace free of sexual harassment. Complaints Committees at all workplaces are now charged with the role to ensure that the right remains intact, through a fair, informed, user-friendly process of redress.

Prioritising prevention and establishing a redress mechanism, which comprises of 50 per cent women, a woman chair and an external third party expert, is India’s innovative model in responding to working women’s experience of sexual harassment. Assuming adequate changes follow, in both law and practice to meet global benchmarks, that model can evolve into an exemplary best practice. To get there, workplaces in India today must rise to the requirement of promoting gender equality⁴⁴¹.

As for the women with disabilities, the POSH Act while laying down the process of complaint registration with the Complaint Committees, mentions that if the aggrieved woman is unable to register the complaint because of either physical or mental incapability, then the same can be done by her relative, or any other person who has knowledge of the incident, with her consent. But it is important to take note that when the Act defines ‘aggrieved women’ it does not mention ‘women with disabilities’ specifically. So their grievance would be redressed but by virtue of being a woman. Therefore the Rights of Persons with Disabilities Act becomes crucial as it not only defines ‘disabilities’ in a comprehensive manner, but also lays down a comprehensive definition of ‘abuse’.

⁴⁴¹Handbook, p. 40

13. Cyber-Based Violence

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Objectives

This module will help the reader to understand

- a. The concept of Cyber-based Violence
- b. Types of cyber-based violence and estimated prevalence in India
- c. Gender-based violence in Cyber Space
 - a. Information Act 2000
 - b. Safety Measures
 - c. Legal mode of redressal for a Cyber-based crime.

13.1 Introduction

Digital Revolution is deemed to be the third revolution in the world after Agricultural and Industrial Revolution. It has made distances smaller and connected people in ways unimagined even two decades ago. India is also a part of this phenomenon with its internet users growing to 500 million in 2018 from 278 million users in 2014. The internet has opened avenues and made life simpler because of services like online shopping, online banking, knowledge generation websites, personal blogs and entertainment etc. The internet is a major medium for communication and recreation.

Communication through online messaging applications, networking websites and other platforms has brought the world much closer. But there is a flip side to it. The internet is also being used for many criminal activities like

- Hacking (*modifying or altering computer software and hardware to accomplish a goal that is considered to be outside of the creator's original objective*)
- Cyber pornography (*creating, displaying, distributing, importing, or publishing pornography or obscene materials*)
- phishing (*obtaining sensitive information such as usernames, passwords and credit card details by disguising as a trustworthy entity in an electronic communication*)
- Web jacking (*gaining access and control over the website of another; changing the information on the site mostly for political gains*)

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- Software piracy (*illegal copying, distribution, or use of software*)
- Cyber terrorism (*politically motivated use of computers and information technology to cause severe disruption or widespread fear in society*)

Many a times such fraudulent activities are gender based i.e. directed towards women, leading to, for instance:

- Online Harassment or Cyber bullying (*the use of email, instant messaging, and derogatory websites to bully or otherwise harass an individual*)
- Cyber-Stalking (*repeated use of electronic communications to harass or frighten someone*), cyber pornography, defamation (*harming the reputation of a person in front of a third party*)
- Photo-Morphing (*a special effect that allows a person to morph or change one image or shape into another without any difficulty*)
- Email Spoofing (*creation of email messages with a forged sender address*), romantic and dating scams (*a confidence trick involving faking romantic intentions towards a victim, gaining their affection, and then using that goodwill to commit fraud*) etc.

Women with disabilities on the internet are as vulnerable to such cybercrimes as other women. They can also be victims of cyber bullying and other kinds of sexual harassment. However it also needs to be remembered that online spaces can offer many advantages to women with disabilities. They can be used for such important activities ranging from online banking to online dating. The importance of the internet for disabled people in general and women with disabilities cannot be underestimated as a tool of empowerment because it can remove many barriers to their participation in major arenas of life.

In 1995, people started using internet in India and five years later came the Information Technology Act 2000. This Act was the first cyber law in India. Cyber law, worldwide, has emerged as a separate specialty within the legal system. It deals with violations on the internet and in cyber space. It covers a range of sub topics like freedom of expression, access and utilization of the internet, digital and electronic signatures, data protection, online security, online privacy etc. The United Nations Model Law on Electronic Commerce 1996 (UNCITRAL model) provided the basis for national level cyber laws in different countries including India.

The salient characteristics of cybercrime are: firstly, the perpetrator may never come into direct contact with the victim, which makes detection and prosecution extremely difficult. Secondly, the impact of cybercrime may have consequences in the real world. For instance, online hacking of one's bank account details, can lead to severe financial losses. The Information Act 2000 provided a legal framework for digital governance by giving recognition to electronic records and digital signature. Given the fact that today most informal and formal communication occurs over the internet including communication for recreation, the relevance of this law cannot be overlooked when discussing gender based violence.

13.2 Types of Cybercrimes

As mentioned earlier, cybercrime constitutes a vast array of activities conducted using internet as a medium. With each passing year in India, the outreach of internet⁴⁴⁴ has increased exponentially. It will reach to 627 million people using internet by 2019, which makes it 40% of India's population. This makes India the country with the second largest internet user base in the world, after China.

With such a large internet user base, the chances of crime penetration through cyber space has increased manifold. This is evident from the statistics provided in the National Crime Records Bureau 2016 report. It shows a 28% jump in incidences of cybercrime in a span of three years (2014-16). During 2016, 48.6% cybercrime cases reported were for illegal gain (5,987 out of 12,317 cases) followed by revenge with 8.6% (1,056 cases), and insult to the modesty of women with 5.6% (686 cases). These numbers are only expected to grow as more and more people will use internet and smartphones.

Below are some of the gender neutral cybercrimes that have been discussed. Gender specific cybercrimes are elaborated in section 13.3.

- i. **Email Spoofing and Email Phishing** –When parts of an email are forged in a way that it appears to have come from a legitimate source like a bank, a newspaper, or a company whereas in reality it is from an untrusted, malicious source, it is called email spoofing. Typically, the sender's name or email address and the body of the message are formatted. These tactics are usually used in spam campaigns or in phishing, but sometimes a spoofed email is also used to dishonestly market an online service or sell the reader a bogus product. For example, in an email spoofing case in Mumbai⁴⁴⁵, Chief Financial Officers (CFOs) of corporate houses received fake emails from their company Managing Directors, demanding urgent funds transfer. Some of these officers even executed the transfer. In this case, the spoofers made lookalike email ids of these managing directors. One of the CFOs transferred Rs 18.6 lakh from the company's account to three unidentified bank accounts. The CFO did not verify the sender of the email who impersonated as the MD.

Mostly the aim of email spoofing is financial gain. The spoofer lures a user into trusting the email and opening it. It then gets directed to a false website where it asks for password and login identity. This leads to false error messages or that the website is not available. During this entire time, the spoofer gains the user's confidential information and then further uses it to perform dishonest transactions for financial gain. The other aim of spoofing can be advertising. So, when an email seems to be from a trusted source, there are chances that the user will open it. This chance is used by spoofers to show spam advertising content to the user.

⁴⁴⁴<https://economictimes.indiatimes.com/tech/internet/internet-users-in-india-to-reach-627-million-in-2019-report/articleshow/68288868.cms> [Accessed 11 Apr. 2019].

⁴⁴⁵<https://timesofindia.indiatimes.com/city/mumbai/15-CFOs-in-BKC-get-spoof-emails-for-funds-transfer/articleshow/53181289.cms>

Email spoofing and phishing are used in conjunction with each other. Email phishing is the act of impersonating a business or other entity for the purpose of tricking the recipient of an email into giving up sensitive personal information. Data gleaned from phishing is often used to commit identity theft or gain access to online accounts. Email phishing uses spoofing technique in its emails to achieve its aim.

- ii. **Spamming** - Spam refers to unsolicited bulk messages being sent through email, instant messaging or other digital communication tools. It is generally used by advertisers as there are no operating costs beyond that of managing their mailing lists. It is also used in other media like internet forums, instant messaging, social networking, junk fax transmissions, and within voice over internet conversation (such as Skype).

The use of spam became popular in the mid 1990s and is a problem faced by most email users till today. It has only increased with time. Usually, the recipient's email addresses are obtained by spam bots, which are automated programs that crawl the internet in search of email addresses. The spammers use spam bots to create email distribution lists. With the expectation of receiving a few responses, a spammer typically sends an email to millions of email addresses. Most of these spam messages are for commercial advertising, but some can contain viruses, adware, or scams which can steal valuable data from the user's computer or prevent the computer from functioning properly.

- iii. **Cyber Defamation**—This is defined as harm that is brought upon the reputation of an individual through cyber space. In *Kalandi Charan Lenka vs. State of Odisha*⁴⁴⁶ (16 January, 2017) case the victim, a college-going woman started receiving obscene messages on her mobile phone. These messages were derogatory and questioned her character. Her father found out about the situation and asked the victim about it. He did not take a legal recourse at that time. Later her father started receiving letters containing vulgar language, derogatory to the character of his daughter. The messages and letters also contained invitation to male members to have sex with the woman. It was alleged in the case that pamphlets against the character of the victim girl were pasted on walls of the hostel where she was residing. As a result she had to change her place of study. But the culprit followed her. Wherever the woman studied, printed pamphlets with sexual remarks against her were pasted on the walls. Finally a fake Facebook account in her name was created and there morphed naked photographs of the woman which were transmitted with the intention to outrage her modesty. Later she informed the police and the case is still under investigation.

This case is an example of cyber defamation. It can cause severe mental stress and trauma to the victim and her family.

⁴⁴⁶<https://indiankanoon.org/doc/73866393/>

- iv. **(Internet Relay Chat (IRC) Crime)**– Online chatting these days has become a prominent mode of communication. It is easy, accessible and low cost. It allows sharing of text, images, audio and video content simultaneously amongst multiple users. Some popular relay online chatting platforms are Whatsapp, Facebook, Instagram, Skype etc. Since these applications are easy to use and have a huge user base, they also provide avenues to perpetuate crime. For instance, criminals chat with their potential victims and win their confidence. They establish a relationship with the victim to the extent that the victim may share his/her private/intimate pictures with the criminal. Slowly, after gaining the victim's confidence, the criminal may try to sexually harass or blackmail him/her. If the victim refuses to pay up, the criminal may threaten to upload victim's photographs or videos which she/he may have voluntarily shared.

Similarly, there may be paedophiles on these groups who are looking to sexually harass children.

- v. **Net Extortion** – Extortion⁴⁴⁷ has been used by criminals to extract money in return for something valuable to the victim. First information is stolen and then an extortion bid in the form of money is made from individuals and companies whose data is illegally with the criminals. Individuals store their private banking or financial information on email and web-based applications, and companies maintain customer data or other important and confidential information on their web platforms.

In 2007, Nokia, the smartphone giant, had to pay several million euros in extortion money. The Finnish phone manufacturer was being held hostage by a hacker who managed to steal an encryption key used in its prevalent Symbian operating system. The attacker threatened to make the key public if Nokia didn't meet payment demands, putting Symbian at risk of other criminals using the key to upload legitimate-looking but malicious apps to phones worldwide. The company did contact Finland's National Bureau of Investigation, but it still got financially soaked by a botched payoff. In a twist of events Nokia left millions of euros in a parking lot with the hope that authorities could trace the perpetrator during the pickup. But the criminal managed to escape with the cash and get away without a trace, leaving the case cold years later.

- vi. **Hacking** – Hacking is the gaining of unauthorized access to data in a system or computer. It can be used to commit fraudulent acts such as financial fraud, privacy invasion, stealing corporate/personal data etc.

Earlier, hacking had been used to describe cybercrimes targeting electronic commerce, and government websites. Slowly the patterns of hacking related to victimization have changed and presently hacking emails, personal non-commercial websites or web links, and personal profiles in the networking sites has become a common phenomenon. When hacking is directed

⁴⁴⁷<https://www.pcworld.com/article/2365242/symbian-signing-key-reportedly-stolen-from-nokia-could-have-enabled-powerful-malware.html>

towards women, it is often done either as a mode of taking revenge for broken affairs or for professional jealousy (Halder & Jaishankar, 2012: 28).The hacker can:

- a. Gain un-authorized access the victim's web pages as well as data retained in the personal computer;
- b. Hack the email id of the victim to harass her, reach out to her friends with malicious mails and content, defame her and debar her from further communicating with her acquaintances through her hacked email id;
- c. Hack and block the victim's profile pages in various social sites;
- d. Deactivate all cyber activities of the victim;
- e. Hack and then withdraw evidence. He may also disappear temporarily under 'disguises' to save himself from the clutches of police (Halder & Jaishankar, 2012).

To illustrate the issue we can take the example of Kirti. Kirti leaves her email open in a cyber cafe. She has gone there to get a printout of her offer letter. After she leaves, Kunal sees her email open on the computer. He starts sending lewd emails and messages to people in her contact list. By mistake he sends an email to Kirti's brother. After seeing the email, Kirti's brother calls her up and asks what is going on. Kirti tells her brother that she has not sent any emails to him. Kirti opens her email and sees vulgar messages sent to her friends and family in the sent folder. She realizes that her email has been hacked. She recalls that she had gone to a cyber café and there are chances that her email might have been misused there. Kirti goes to the café and finds Kunal using her email id to send messages. Later, she hands over Kunal to the police.

Questions/Discussion

Is a disabled internet user more vulnerable to cybercrime than a non-disabled person? Discuss.

13.3 Gender Based Violence in Cyber Space

As the discussion in the previous section shows, cyber space is one of the arenas where gender based violence can occur. Crimes like hacking, phishing, spamming, net extortion, online defamation etc, are directed towards both men and women. But certain offences like email/profile hacking, morphing, spoofing, obscene publication, cyber stalking, cyber pornography, internet voyeurism, cyber defamation, cyber bullying, e-mail harassment, cyber blackmailing/threatening may happen more to women. Cyberattack on a woman can leave her as traumatized as a physical attack. Any kind of attacks against a woman may be carried out to destroy her personal reputation, create fear and extract monetary favors (Citron, 2009a).

The main cybercrimes directed towards women are:

- a. **Email Harassment:** Email harassment is one of the many modes of 'emotional injuries' inflicted upon victims (Halder & Jaishankar, 2012).

Email harassment happens in the following ways:

- Sending repeated e-mails or instant messages that may or may not directly threaten the recipient (Finn, 2004);
- Flooding a victim's e-mail box with unwanted mails, sending the victim files with a virus (Finn, 2004);
- Misusing the victim's email id and listing it for receiving continuous spam messages like sexually erotic messages, adult content advertisements and also phishing emails.
- Spreading the email id to others to disturb the privacy of the victim.
- Randomly searching email ids of women and continuously sending messages like "I like you", "talk to me", and "want to be friends".
- Referring email ids bearing female names to social networking sites, chat rooms, forums etc. without prior permission of the owner of the email id.
- Continuously sending "add me" requests for online chatting.

Email harassment thus leads to not only stalking, but also other cyber-crimes like invasion of privacy, blackmailing etc.

- b. **Blackmailing** - A very common offence that is done to women online is blackmailing. In this case,

- The perpetrator could be known to the victim either through real life meetings or through internet / telephone communications.
- The perpetrator could also be an unknown individual.
- The blackmail could sometimes be a result of "jilted love affair", sexually biased professional jealousy, continuous rejection on the part of the victim to meet the perpetrator outside the virtual world etc.;
- The blackmailing could also be done to forcefully extract money. It is seen that in cases where the victim and perpetrator are known to each other, the blackmailer begins by sending mails to the victim which carry ugly secrets of her private life, accompanied by threats to either publish them in front of a larger audience on the internet or reveal secrets to her family members. The victimization can happen through email communications, text messages or private chat rooms.

In some cases the perpetrator may also befriend the victim (committed or married women) through various internet communications after doing a thorough research on the monetary and

social background of the victim. When the perpetrator succeeds in winning her trust as a reliable virtual friend, the blackmail begins for monetary gain with a threat to reveal their “immoral relationship” to her suitor or husband, or a threat to kill her husband or defame the victim in front of a larger public.

In 2009, famous sitar player Anouska Shankar was blackmailed by a Mumbai based engineer. (Oneindia, 2009). As per the report lodged by her father the renowned sitar maestro Pandit Ravi Shankar, when Anouska gave her laptop to a service centre in early 2009, someone had copied some materials from the laptop, including her “private photographs” without her permission. The investigation revealed that the suspect, an engineer from Mumbai, sent continuous mails to Anouska demanding one million US dollars for not publishing her photos.

c. **Cyber Stalking** - Cyber stalking means a group of behaviours in which an individual, group of individuals or organization, use information and communications technology to harass another individual, group of individuals or organizations. Such behaviours may include, but are not limited to, the transmission of threats and false accusations, damage to data or equipment, identity theft, data theft, computer monitoring, the solicitation of minors for sexual purposes and any form of aggression. Some cyber stalkers harass women due to a spoiled relationship built up either online or offline; sometimes cyber stalking can occur as a continuation of offline domestic violence targeted former spouses (Halder, 2009; Whitty, 2005). Such analysis of gender based violence in cyber space does not escape the potential of misogyny, since the explanations offered are often from the perspectives of the perpetrator. Some salient features of cyber stalking are:

- Cyber stalking involves constant following of the victim in cyber space with an intention to harm.
- Stalking may start through email communications, chat room communications, acquaintances through social networking sites, texting etc.
- Stalking may lead to threatening, blackmail through cyber communications, defamation (posting the victim’s information in open forums or bulletin boards, portraying the victim as an amoral woman in different internet postings), and introducing unknown cyber predators to the victim etc.
- Online Stalking may also lead to offline threats.
- Cyber stalking does not necessarily extend to sexual harassment.

Cyber stalking qualifies as an offence only when it results in personal harm to the victim like damage to reputation, extensive harassment etc.

For example, the victim, a divorced young woman, went to live in another city to make her life. The perpetrator searched the victim’s name on the internet and came to know her present residential and workplace addresses. He mailed to her employer with obnoxious

information about her and prepared fake profiles only to insult, humiliate and defame her. (Halder & Jaishankar, 2012)⁴⁴⁸

d. Cyber Bullying - Jaishankar (2008) defines cyber bullying as “abuse/ harassment by teasing or insulting, about victims’ disability, body shape, intellect, family background, dress sense, mother-tongue, place of origin, attitude, race, caste, class, name calling, using modern telecommunication networks such as mobile phones (SMS/MMS) and internet (chat rooms, emails, notice boards and groups)” . Contrary to popular belief, cyber bullying is not limited to children, but adults are also victimized. In fact, women are top targets of adult cyber bullies (Angela, 2009; Itson, 2009). The bully may start from small disagreements in the forums/chat rooms or even in real life social hubs; the victim then becomes target of huge attack. It can be seen that:

- Both men and women can be perpetrator while bullying women.
- The bully may have been in the habit of bullying others.
- The perpetrator may target the victim with obscene/vulgar remarks.
- Adult bully targeting women may not always end in online sexual harassment of the victim like portraying her character as that of a “hot babe”.

Cyber bullying may involve comments on a woman’s parenting skills (if she is a mother), how she fails to satisfy her husband sexually (in case she is married), how and why she fails to attract men (in case she is single and dating), and invite others to participate in the bullying.

- Once the victim starts responding to the harsh messages, bullying begins.
- Bullying may lead to online defamation and infringement of privacy as the bully may play a lead role in leaking the personal information of the victim on the web.
- Bullying can also involve an anonymous mob attack on the victim (Citron, 2009b).
- The bully may try to convince the victim that she is to be blamed, and not the perpetrator (Itson, 2009).

For example, the perpetrator was a habitual bully. When the victim⁴⁴⁹ was trapped in an unwanted misunderstanding, the perpetrator started bullying by commenting on her professional skills. The victim received nearly 15 mails in ten minutes which were also forwarded to her business partner, to defame her. The perpetrator nearly convinced the victim that she was never a good manager and she lacked professional skills because she did not go to better institutions. (Halder & Jaishankar, 2012)

⁴⁴⁸ Available at file:///C:/Users/CWDS/Downloads/Debarati%20Halder_%20K%20Jaishankar%20-%20Cyber%20crime%20and%20the%20victimization%20of%20women%20_%20laws,%20rights%20and%20regulations%20(2012,%20Information%20Science%20Reference%20).pdf; P 26

⁴⁴⁹ Available at file:///C:/Users/CWDS/Downloads/Debarati%20Halder_%20K%20Jaishankar%20-%20Cyber%20crime%20and%20the%20victimization%20of%20women%20_%20laws,%20rights%20and%20regulations%20(2012,%20Information%20Science%20Reference%20).pdf; P 27

- e. **Cyber Obscenity** - Creating obscene profiles and web pages with innocent women's pictures and information, sending obscene remarks and obscene images to women etc, could be identified as the most chosen trend to harass women in cyber space. While it is true that obscenity and pornography are interlinked, it is to be noted that pornography is one of the modes to express obscenity. Pornography is largely used to 'explain' sexual activities with the help of graphics including movies and still photos. Obscenity can be expressed even by verbal written words which may not include such images.

Cyber obscenity can be perpetrated in following ways:

1. Forcefully sending obscene, lewd messages about the victim's body or lustrous images of a female or male naked/semi-nude body depicting sexual organs in an indecent way to create unnecessary hatred or fear or uncomfortable feeling for the victim when she looks at the message.
2. Sending to the victim's inbox visual images depicting sexual activities portraying women as "sex slaves".
3. Creating stories in prurient language about sexual activities involving victim's name and/or photographs, cartoons, graphic images etc. and floating on the web, which successfully portrays the victim as a perverted sex partner, designed to generate hatred and humiliate the victim among common people.

Cyber obscenity targeting women is getting momentum due to ever improving digital tools.

Reported case: A woman was targeted by a man who kept on filling the message box of her mobile phone with obscene nude pictures of men including his own nude pictures. The investigations revealed constant stalking by the harasser and consequently sending lewd pictures to the victim to disturb her privacy (Halder & Jaishankar, 2012, citing Webster Parish Sheriff's Department, 2009).

- f. **Cyber Pornography** - Unlike obscenity, pornography remains an undefined term by the laws and it is more perilous for women. When the term is used in the context of cyber space, however, it usually refers to child pornography. Ironically, although pornography in cyber space also targets women, it is hardly recognized as a crime against women due to the clash of fundamental freedoms of speech and expression on the one hand, and dignity of women on the other. It is to be noted that pornography may not be treated as a crime when a woman who is depicted as a model therein, consents to her involvement. In this section, stress is being laid upon forced pornography or non-consensual pornography which constitutes a crime in itself when the woman is either made a target without her knowledge or made to give her consent under threat.

Forced pornography involves the following elements:

- Voyeurism including stealing the victim's personal pictures, or capturing her images which may or may not show the victim in compromising positions through secret camera;

- Using the visual images of the victim (either the original picture or the morphed image) without her permission, to create pornographic clippings, gallery etc for fulfilling sexual gratification of others, may be or may be not for financial gains;
- Threatening the victim with dire consequences and forcefully pressurizing her to consent to use of her photographs for pornographic purposes.

A woman can be victim of forced pornography when:

- a) her picture, either already available on the net or digitally scanned without her consent, is morphed without her knowledge and distributed to a wider audience for evil motive;
- b) her picture is used to digitally design graphics to depict her involved in sexual activities with a man/group of men;
- c) her picture is used without her consent in adult websites to invite others to virtually striptease, rape or molest her;
- d) her profile has been hacked and her pictures in the profile have been morphed. Victimization begins when the hacked profile is used to cater the needs of sexually perverted internet users;
- e) the harasser captures her private moments through voyeurism and uses these voyeur images for monetary gain. (Halder & Jaishankar, 2012)

Reported Case - The harasser had rented out a holiday cottage in England where he fixed up secret hidden cameras and video recorders with fake smoke alarms to watch guests taking showers, changing dresses and having sex. He used to have CCTV monitor where he used to watch these voyeur recordings. When one of the guests suspected and complained to the police, the whole foul play was unearthed. The police reported that he captured images of 10 female and 2 male guests (BBC, 2009) (Halder & Jaishankar, 2012: 30)

- g. **Morphing** – It is one of the most widely practiced modes of online crime that victimizes women in the space. Morphing is unauthorized modification of personal picture of the woman. This essentially includes unauthorized access to the personal data of the victim stored in either social networking websites or corporate websites or even the personal computer of the victim. While many social networking sites treat this as infringement of copyrighted materials, in general this activity is seen as hacking and modification of web-contents. In such cases the perpetrator can
 - Create another web profile with the morphed picture of the victim and misuse the accessed personal data by describing her in an obscene fashion to mislead others.
 - Modify the existing web contents to exhibit the victim in a ‘dirty’ manner.
 - Use the modified contents to defame the victim in every possible manner.
 - Misuse the contents for blackmailing the victim.

- h. **Hate Crime**⁴⁵⁰ - There can be multiple instances where women become the target of cyber violence only because they are women. In the internet, multiple attacks on the woman victim occur, when the perpetrator(s):
- Continuously send the victim “I hate you” mails either with the sender’s own name or with anonymous names;
 - Spread “hate her” message through emails to the victim’s and the perpetrator’s acquaintances;
 - Reach out to social networking sites by creating groups or communities to hate her, and also encouraging others to join in;
 - Write blogs or create websites to tell the “story” of the victim, taking her name and thereby publicly defaming her.

A woman can be targeted in cyber space for various reasons, for example; she may not have any direct relationship with the perpetrator, but she may be the target of hatred due to her various political, academic or social ideologies which are not liked by the perpetrator; or she may be an actor whom the perpetrator “loves to hate”. She could even be the object of hatred due to her past relationship with the perpetrator in the form of a former colleague whom the perpetrator never liked, ex-spouse or ex-girlfriend etc. In such cases, it is seen that the perpetrator uses internet as a medium to express his inner hatred in foul languages and feels this is the best possible way to make the victim as well as other onlookers know his feelings. Such analysis of gender based violence in cyber space does not escape the potential of misogyny, since the explanations offered are often from the perspectives of the perpetrator.

Online hate crimes can be grouped under two heads namely,

(i) Cyber Verbal Abuse expressing hatred

This is a sort of cyberattack done by one or more perpetrator(s) to a particular female victim or group of victims. In case of cyber hatred not amounting to defamation, the perpetrator(s) may limit the perpetration within certain specific activities like sending hate mails to the victim, threatening with dire consequences, attacking the victim by sending repeated annoying mails from various users, alluring her in private chat rooms (private chat room is where online chat happens only between two people) and then attacking her, or banning her from any forum or group where these perpetrators create a majority number of members etc. The attack is limited between the perpetrator(s) and the victim, and the perpetrator(s) generally term themselves as her direct or indirect victims. In such cases, the perpetrator(s) may or may not involve a wider internet audience. These attacks tend to die down once the perpetrator is satisfied that the hate message has been successfully conveyed to the victim.

⁴⁵⁰Hate Crime -hate crime means a crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.

- (ii) Cyber defamation targeting the victim – There is a thin line of difference between cyber hate not amounting to defamation and cyber defamation. In case of cyber hate not amounting to defamation, the perpetrator may or may not spread the flame outside the “fighting zone” (communication space between the perpetrator and the victim). But in case of cyber defamation, the perpetrator does not limit himself to sending hate messages to the victim only; he tends to make his victim a “public figure” by asking everyone irrespective of known or unknown individuals, to hate her and ridicule her. In such cases, the perpetrator may open a blog or webpage to belittle the victim; may mob attack her in her own webpage or blog (Citron, 2009b); may send mails containing malicious, false, cooked up stories to the victim as well as his own acquaintances; and may use the social networking sites to create “I hate you” communities taking up the name of the victim. Cyber defamation may start from the perpetrator’s personal animosity or jealousy towards women, in particular the victim, or from disliking the views of the victim, or any other twisted motive.

Questions/Discussion

Are women with disabilities more or less vulnerable to cyber based violence on the internet?

13.4 Cyber Law in India

India enacted the Information Technology Act in the year 2000. The main aim of the legislation was to cover commercial and economic crimes committed in cyber space. It was based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce given by United Nations in the year 1997.

The IT Act 2000, is now being used in conjunction with Indian Penal Code to address cybercrimes against women including women with disabilities. The important sections of the Act are as follows -

Section 65 of the IT Act 2000 talks about punishment when tampering with computer source documents happens. It says that if a computer’s source documents have been intentionally or knowingly destroyed, concealed, or the source code of a computer is changed where the source code is used for the computer, computer program, and computer system or computer network, the perpetrator will attract imprisonment of up to three years or a fine of Rs. 2 lakhs or both.

Section 66 deals with hacking of computer system, data alteration etc. Whoever with the purpose or intention to cause any loss, damage or to destroy, delete or to alter any information that resides in a public or any person’s computer, diminishes its utility, values or affects it injuriously by any means, commits hacking. Any person who involves in such crimes could be sentenced up to 3 years imprisonment, or a fine that may extend up to 2 lakhs⁴⁵¹ rupees, or both.

⁴⁵¹ In Information Technology Amendment Act 2008, the fine has been enhanced from two to five lakhs

Section 66A talks about sending offensive messages through any communication services. If an individual sends any information⁴⁵² or message which is offensive or has threatening character; or the message⁴⁵³ is not true or is not valid and is sent with the end goal of causing annoyance, inconvenience, danger, insult, obstruction, injury, criminal intention, enmity, hatred or ill will; or the message is sent with the end goal of causing anger, difficulty or to mislead or to deceive the addressee about the origin of the messages; the individual is liable for a punishment of up to 3 years of imprisonment along with a fine⁴⁵⁴.

Section 66C deals with identify theft of an individual. Using someone else's digital or electronic signature or password or any other unique identification of any person is a crime. The punishment for this offense is up to 3 years of imprisonment along with a fine that may extend up to rupee 1 lakh.

Section 66E talks about privacy or violation. Whoever knowingly or with an intention of publishing, transmitting or capturing images of private areas or private parts of any individual without his/her consent, that violates the privacy of the individual, shall be sentenced to 3 years of imprisonment or with a fine not exceeding more than 2 lakhs rupees or both.

Section 67 talks about transmitting or publishing obscene materials in electronic form. It says that whoever transmits or publishes or causes to publish any obscene materials in electronics form, any material that is vulgar or lubricious or if its effect is for instance to tend to corrupt any individual who reads, sees or hears the matter contained in it, shall be sentenced on the first conviction for a term that may extend up to five years of imprisonment along with a fine which may extend up to 1 lakh rupee, and in the second or subsequent conviction can be sentenced for a term that may extend up to ten years along with a fine that may extend up to two lakhs rupees.

Section 67A deals with transmitting or publishing of materials that contain sexually explicit contents, acts etc in electronics form. Whoever transmits or publishes materials that contain sexually explicit contents or acts shall be sentenced for a term which may extend up to 5 years or imprisonment along with a fine that could extend to 10 lakhs rupees in the first conviction. And in the event of a second conviction, the criminal could be sentenced for a term that could extend up to 7 years of imprisonment along with a fine that may extend up to 20 lakhs rupees.

In cases of gender based violence the IT Act 2000 can be used in conjunction with Indian Penal Code. This is illustrated in examples below -

⁴⁵² The new phrase in the Information Technology Amendment Act 2008, reads as 'any information that is grossly' offensive or has menacing character

⁴⁵³ The new phrase in the Information Technology Amendment Act 2008, reads as any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will

⁴⁵⁴ In the new Information Technology Amendment Act 2008, there is an addition of Electronic Mail or Electronic message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages

*Dr.L.Prakash v. Superintendent*⁴⁵⁵

In this case the accused was an orthopedic surgeon who forced women to perform sexual acts and later uploaded and sold these videos as adult entertainment materials worldwide. He was charged under section 506 (part II of the section which prescribes punishment for criminal intimidation to cause death or grievous hurt), 367 (which deals with kidnapping or abduction for causing death or grievous hurt) and 120-B of the Indian Penal Code (criminal conspiracy), and Section 67 of Information Technology Act, 2000 (which dealt with obscene publication in the internet). He was sentenced to life imprisonment and a pecuniary fine of Rupees 1, 25,000 under the Immoral Trafficking (Prevention) Act, 1956.

*State of Tamil Nadu v. Suhas Katti*⁴⁵⁶

In this case the accused Katti posted obscene, defamatory messages about a divorced woman in a Yahoo message group and advertised her as soliciting for sex. This case is considered as one of the first cases to be booked under the Information Technology Act, 2000 (IT Act). He was convicted under sections 469, 509 of IPC and 67 of the IT Act 2000 and was punished for 2 years rigorous imprisonment and fine.

Questions/ Discussion

What are the provisions in the IT Act 2000 that carry relevance for gender based violence?

Safety Tips in Cyber space—

- a. **Don't share passwords** – Passwords should not be shared with friends, families or other acquaintances. A friend or relative might not have the intention to use it in a wrong way but can accidentally reveal it to someone else. Since passwords unlock a lot of private information (messages, audios, videos and images) of an individual, it is better to be safe than regretful.
- b. **Don't leave your webcam connected** - There are too many apps capable of turning on your camera and slyly recording your movements without your knowledge. As a precaution disable camera permission and keep the lens of your camera closed or covered when not in use.
- c. **Don't share more than necessary** - Relationships have only two shades in a spectrum – very good or very bad. Even the best of people can swing from one end of the spectrum to the other. That is why use caution when you share intimate messages, pictures, information or anything that has the potential to come back and embarrass you.
- d. **Don't meet online acquaintances alone** – One should always let their friends and family know when they are going to meet a person whom they met on an online platform. One

⁴⁵⁵<https://indiankanoon.org/doc/521745/>

⁴⁵⁶<http://www.pslaw.in/category-page/110-state-of-tamil-nadu-v-suhas-katti.html>

cannot be sure of the person on the other side of the messaging app. Also, meeting should be conducted in a crowded coffee shop or mall.

- e. **Reveal only as much as needed** - There are too many sinister characters browsing social media sites wanting to initiate friendship with unsuspecting women. One should be careful about posting details about their whereabouts and lifestyle. Stalkers can find ways to reach a victim with a simple photograph or status update. Geotagging (process of adding geographical information to various media in the form of metadata. The data usually consists of coordinates like latitude and longitude, but may even include bearing, altitude, distance and place names) should be disabled while using camera. It should be enabled when required. Any device with an enabled 'location service' poses the risk of exposing an individual's exact location at any given time.
- f. **Update all operating systems on your devices** – Regular updation of phone and computer operating systems is necessary. It ensures that latest security updates and patches are installed and it helps to keep the latest threats away.
- g. **Read the fine print** – Awareness and knowledge regarding privacy policy and terms of services of any service that an individual uses should be there. Some websites can own, sell, rent or resell information to anyone they want. This can come back as a bigger problem and the law may not be able protect the user since s/he has agreed to the terms and conditions.
- h. **Block people you don't want to interact with** – One should not feel weird in declining friend requests from people they barely know. Instincts should be trusted and one should unfriend or block them. A user always has the right to choose who stays on their friend list. An individual's instincts play a critical role in their protection. If something feels 'off', then instincts should be followed and no reason has to be given to anyone.

Questions/Discussion

Can you suggest some disability specific safety tips in cyber-space?

Conclusion

Cyber space is a combination of both positives and negatives. On one hand it can enable services like healthcare, education, banking, communication to reach to the farthest corners of this world. But on the other hand it is ridden with criminal activities where perpetrators are constantly on a lookout for innocent victims. It also provides a space where hatred, animosity, revenge etc. can be spewed over women with or without disabilities, without the perpetrator revealing their identity. It is important in such scenarios that online safety measures are used efficiently along with legal awareness that cybercrimes are punishable under the law.

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Annexure I⁴⁵⁷ - Immediate Things to Do Post an Experience of Violence

1. Do not make any alteration on the scene of the crime.
2. Inform someone you trust for support.
3. Inform the police as soon as possible to ensure that evidence is recorded on time.
4. Ensure medical assistance at the earliest.
5. Remember the culprit is going to deny the crime; hence evidence is vital to get justice for you.
6. Ensure First Information Report (FIR) has been registered and you have received a copy of the same. It is your right to receive a copy of the FIR.
7. If required seek the support of a lawyer through legal services authorities⁴⁵⁸, so that the lawyer ensures that all the appropriate offences have been registered against the accused.
8. If required, move to a safer place. To do this you can seek the State Helpline support⁴⁵⁹.
9. Women and children may need to move unsafe or violent environment to a secure place such as a temporary or permanent rehabilitation centre.
10. The State Helpline and/or the rehabilitation centre must provide counselling and psychological support to the victim.

⁴⁵⁷ These annexures have been collated by Sunakshi Bajpai (Research Associate, Center for Women's Development Studies Project on: Violence against Women and Girls with Physical Disabilities: Understanding the Issues and Promoting Legal Empowerment supported by South Asia Women's Fund New Delhi and a disability and gender rights professional). Email : bajpai87@gmail.com) and Seema Baquer (Independent Consultant, New Delhi)

⁴⁵⁸ Refer to Annexure XVI on National and State Legal Services in India

⁴⁵⁹ Refer to Annexure IX on Women helplines in India

Annexure II - Gathering Evidence and Accessing Legal Aid

If police is not reaching you in time, write a complaint before you forget the sequences of the incident. Remember time plays a vital role to get justice for you, hence write down the incident to recollect it at any point of time. Remember to add time and date, if possible. Though an oral complaint is enough to register an FIR, a written complaint would make the case more strong.

Format of the Complaint

1. Details of the de-facto complainant
2. Details of the accused/abuser
3. Place of incident
4. Time/dates
5. Explain the incident as it is.

Some things to keep in mind when the victim writes the report:

- Consistency is the primary rule to be followed while giving evidence
- Clear and concise statements
- Give only relevant details pertaining to the offence
- Give only statements about what was witnessed, not opinions
- Use your own words
- Write down the time and sequence of the incident before giving evidence
- State all relevant matters, necessary to establish connection with the incident and the violence suffered by the victim
- The victim's statement must bring out the effect of the violence
- It is absolutely fine to tell if you don't remember something
- If there is more than one witness, ensure uniformity in all their statements
- Avoid legal statements about the implication of the evidence
- Make sure to attach all supporting documents such as police report, medical report etc.,

The entitled persons can avail legal services to file cases on their behalf or to defend them in the cases filed before any Court. The person seeking legal aid can apply for legal services in the following proforma to any of the legal services institutions where they need legal service.

Application for Legal Aid⁴⁶⁰ –

⁴⁶⁰ Available at http://www.legalserviceindia.com/forms/legalaid/legalserviceindia.com_form2.pdf

1. Name of Applicant:
2. Father's/Husband's Name:
3. Residential Address (Tel. No. if any):
4. Whether Employed/Unemployed:
5. Place of Work:
6. Nationality & Religion:
7. Whether SC/ST (Proof in support) :
8. Income per month (Affidavit on Rs.10/- On non-judicial paper in support of it):
9. Name and Address of opposite party & Tel. No. (if any) :
10. Whether legal aid is required to file:

Suit/Application U/s 125 Cr. P.C./Civil (Please state the category) Writ/ Criminal Writ/ Labour Case/ Service Matter/Criminal Matter/ Other (pl. specify)

- (a) State the full address of immovable property in dispute and the place where property is situated:
- (b) In money suit, state the date on which it fell due:
11. Whether any application has been filed previously before this Authority, if yes, mention date and file No. of application:
12. Details of your problem (in brief) :
13. Please state whether any case is pending before any court, if so, the details thereof:
14. Nature of relief sought:

Signature of the Applicant
Remarks:

Whether entitled to legal aid

Delhi Legal Services Authority Room No.-1, Patiala House Courts, New Delhi

Annexure III⁴⁶¹ - How to File a Police Complaint (First Information Report (FIR))

What is FIR?⁴⁶²

First Information Report (FIR) is a written document prepared by the police when they receive information about the commission of a cognizable offence⁴⁶³. It is a report of information that reaches the police first in point of time and that is why it is called the First Information Report.

- **FIR can be registered orally.** The condition is, after giving the oral statement it is the duty of the person registering the First Information Report to produce that oral statement in writing.
- Once satisfied that all the information is recorded in an FIR, the person making it should sign the FIR.
- A person making a First Information Report has the right to get a copy of the FIR.
- It is mandatory under the provision of Code of Criminal Procedure for a police constable to register a First Information Report.
- The prompt and early reporting of an FIR, as soon as one comes to know of the happening of an offense, is advisable.
- If an FIR is still not filed at an early stage, the findings of an FIR cannot be doubted on the same ground.
- The only thing needed before filing a late FIR is a reasonable reason for the delay in filing of an FIR.

What are the consequences of Delay in Filing of an FIR

- **5 hours delay:** Not seen with suspicion.
- **6 hours delay:** Does not in any manner warrants any adverse inferences.
- **12 hours delay:** Non-explanation of delay of 12 hours in lodging the First Information Report assumes significance from the point of view of evidence law.
- **15 hours delay:** When the evidence is clouded with strong suspicion and as the First Information Report is lodged with a delay of 15 hours, false implication of accused cannot be completely ruled out.
- **5 days delay:** Accused becomes entitled to benefit of the doubt.
- **14 days delay:** It will be utterly unsafe for convicting a person based on an allegation 14 days late.

⁴⁶¹ Available at <https://blog.iplayers.in/fir/>

⁴⁶² Available at <https://www.humanrightsinitiative.org/publications/police/fir.pdf>

⁴⁶³ **Cognizable offenses** are ones where police officers have the right to arrest a person with or without a warrant and to start the investigation of the crime prior to obtaining permission from the court.

In spite of the delay, if still, the First Information Report looks substantive from the point of view of the law, such delay will not result in letting the alleged culprit escape.

How to Register an FIR?

- Visiting the nearest police station within the crime scene (preferably).
- Informing either orally or in writing. In case a verbal complaint is made, it is the duty of the authority recording the FIR to convert it into writing.
- First Information Report should be signed by the person giving the complaint. The complainant should sign the report only after verifying that the information recorded by the police is as per the details given by him/her. People who cannot read or write must put their left thumb impression on the document after being satisfied that it is a correct record.
- It is the duty of the police authorities to register the FIR in a record book.
- It is the duty of the police officer to provide the complainant with a free copy of FIR.

The Ministry of Home Affairs has an online portal called Digital Police Portal which can be used to file a FIR. It is a centralized service for filing complaint from any part of India. The link to this portal is

https://digitalpolice.gov.in/ncr/State_Selection.aspx.

What should you mention in the FIR?

- The name and address of the complainant.
- Date, time and location of the incident which is being reported.
- The true facts of the incident as they occurred;
- Names and descriptions of the persons involved in the incident;
- Witness information, if any.

Things the complainant should not do –

- Never file a false complaint or give wrong information to the police.
- You can be prosecuted under law for giving wrong information or for misleading the police [Section 203, Indian Penal Code 1860]
- Never exaggerate or distort facts.
- Never make vague or unclear statements.

**Annexure IV⁴⁶⁴ - Proforma for Reporting the First Information (FIR) of a Cognizable
Offence**
(Under Section 154 of the Criminal Procedure Code)

An FIR must include the following Items

Police Station.....

District

1. Personal details of the Complainant / Informant:
 - (a) *Name*
 - (b) *Father's / Husband's Name*
 - (c) *Address*
 - (d) *Phone number & Fax (e) Email:*
2. Place of Occurrence:
 - (a) *Distance from the police station*
 - (b) *Direction from the police station*
3. Date and Hour of Occurrence:
4. Offence:
 - (a) *Nature of the offence (e.g. murder, theft, rape, etc.)*
 - (b) *Section (To be decided/written by Office only)*
 - (c) *Particulars of the property (in case property has got stolen):*
5. Description of the accused:
6. Details of witnesses (if any)
7. Complaint: Briefly lay down the facts regarding the incident reported in an accurate way.

Note: At the end of the complaint, the complainant's/informant's signature or thumb impression should be there.

⁴⁶⁴ Available at <https://www.amu.ac.in/pdf/proctor/fir.pdf>

Sample FIR letter by Complainant

From

*(Applicant's Name),
Father's/Husband's Name
(Applicant's contact address)
(Applicant's contact mobile number/Phone number)
Applicant's e-mail id (if any)*

Date_____

To,

The Police Officer In charge
Address (Name of Local Police station)

Subject: (mention subject e.g. your lost document/phone name and Number)

Respected Sir,

I would like to bring the following facts to your kind notice:

(Include details/contents 1-7 as given in Proforma)

.....
.....

I seek your help and request you to kindly register my F.I.R in the subject matter.

For your ready reference I enclose herewith (a) *Copy of[Complainant/Informant]
I.D. proof.*

Hope you will do the needful favorably at the earliest.

Thanks and regards
Yours Sincerely

_____ (*Complainant/Informant* Signature)
_____ (*Complainant/Informant* Name)

Note: You should make two copies of the Application (one copy for police station record, one copy for your own record)

Annexure V - What to Do If a Police Official Refuses to File Your FIR

In *Lalita Kumari vs. Government of Uttar Pradesh & Ors*, the Hon'ble Supreme Court of India has reaffirmed that, Registration of FIR is mandatory under Section 154 of the Criminal Procedure Code, if the information discloses commission of a cognizable offence, and no preliminary inquiry is permissible in such a situation. In case of refusal on the part of the officer in charge of the police station to record the information, take the following steps.

1. Send the substance of such information, in writing and by post, to the concerned Superintendent of Police (Sec 154(3) of the Criminal Procedure Code)
2. If such information discloses the commission of a cognizable offence, he/she shall either investigate the case himself/herself or direct an investigation to be made by any police officer subordinate to him/her.
3. If this does not yield any result, for either registering the FIR or no proper investigation after registering the FIR, file an application under Section 156(3) of the Criminal Procedure Code (CrPC) before the concerned Magistrate.
4. The Magistrate can direct for registering FIR and a proper investigation. The Magistrate has power to monitor the investigation to ensure a proper investigation.
5. High Courts and Supreme Court are the last resort under its writ jurisdictions.

Annexure VI - Difference between a Daily Diary Entry and an FIR⁴⁶⁵

Daily Diary Entry	FIR
Under Section 44 of the Police Act 1861	Under Section 154 ⁴⁶⁶ of the Criminal Procedure Code
Entry on daily diary is required both for cognizable and non-cognizable offences	FIR is mandatory if the information discloses commission of a cognizable offence. ⁴⁶⁷
It is a daily record at police station to maintain all information related to the cases brought to the police station	First Information specific to an offence as reported by the informant.
Internal reporting on the substance of the FIR viz., the details of the informant, the names of the accused and the eye witnesses are entered in Daily Diary	Recorded in a separate book/register, which requires the signature of the complainant
It is just a record of the daily events in a police station. It may even contain the daily arrival of the police officers etc.	FIR book is allotted with a unique annual number so that it can be tracked easily
Internal record of the police station and no need to send its copy to the Judicial Magistrate in connection with any crime	Police officers are obligated to send the copy of the FIR to the concerned Judicial Magistrate
Data is mentioned in chronological order and only a gist of the important points	Contains entire information about the reported offence
	Valuable piece of evidence for the purpose of corroborating oral evidence adduced during trial.
	2013 Amendment mandates that only woman police officer shall record the FIR for sexual offences.
	If the victim of sexual offence is a woman or child with disability, then a woman police officer shall register the FIR at the place of victim's residence or at a convenient place of the victim's choice.

⁴⁶⁵ Available at <https://blog.iplayers.in/difference-general-diary-entry-fir/>

⁴⁶⁶ **154. Information in cognizable cases.**— (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. (2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

⁴⁶⁷ Cognizable offences :Cognizable offences are those offences where the police official is empowered to arrest without a warrant. Non Cognizable Offences: Non-cognizable offences are those in which the police officials are obligated to obtain a warrant from the appropriate Magistrate.

Annexure VII⁴⁶⁸ - How to File a Complaint for Cybercrime

1. The very first step to file a cyber-crime complaint is to register a **written complaint** with the cybercrime cell⁴⁶⁹ of the city where the victim is currently in.
2. When filing a cybercrime complaint, the victim needs to **provide name, contact details, and address for mailing**. The victim needs to address the written complaint to the **Head of the Cyber Crime Cell** of the city where she/he is filing the cybercrime complaint.
3. In case the individual is a victim of **online harassment**, a legal counsel can be approached to assist him/her with reporting it to the police station. Additionally, the victim may be asked to provide certain documents with the complaint. This would depend on the nature of the crime.
4. **Register a Cyber Crime FIR:** If the victim does not have access to any of the cyber cells in India, he/she can file a First Information Report (FIR) at the local police station. In case the complaint is not accepted there, the victim can approach the **Commissioner** or the city's **Judicial Magistrate**.

It is mandatory under Section 154, **Code of Criminal Procedure**, for every police officer to record the information/complaint of an offense, irrespective of the jurisdiction in which the crime was committed.

6. Most of the cybercrimes that are covered under the Indian Penal Code are classified as **cognizable offenses**. In this case, a police officer is bound to record a *Zero FIR*⁴⁷⁰ from the complainant. He must then forward it to the police station under the jurisdiction of the place where the offense was committed.
7. *Zero FIR* offers some solace to victims of cases that require immediate attention/investigation as it avoids wasting time in enlisting the offense on police records.

For Filing Complaints Related to Social Media Cyber Crimes:

1. Apart from the above steps, one must also register a complaint on the corresponding platform where the offense was committed. The steps for the same are clearly stated on every social media platform.
2. Most of the **social media platforms** have a clear procedure in place for reporting any abuse or other nasty offenses. The victim must make sure that he/she **reports such activities** in the very initial stages of its occurrence. This shall enable the concerned social media platform to take immediate steps for blocking further activities and protecting the privacy of your personal information.

⁴⁶⁸ Available at <https://ifflab.org/how-to-file-a-cyber-crime-complaint-in-india/>

⁴⁶⁹ Please refer to annexure XV for contact details of cybercrime cells in India

⁴⁷⁰ Zero FIR is a FIR that can be filed in any police station regardless of the place of incidence or jurisdiction. The same is later transferred to the Police Station having competent jurisdiction after investigation and filing with a magistrate

3. Facebook, Twitter, Instagram, Snapchat, and YouTube have a strict and **clear redressal mechanism** to protect its users from online abuse and cybercrimes. The victim should make sure that he/she does the groundwork on the guidelines of these platforms for reporting an abuse without waiting for an abuse to actually happen.

Registering an Online Cyber Crime Complaint

The Ministry of Home Affairs has a dedicated website for reporting cybercrime. All the offenses which have been committed in cyber space including rape, gang rape, child pornography and child sexual abuse material can be reported on this platform. The link to it is <https://cybercrime.gov.in/cybercitizen/home.htm>

Some states also have their online portal for reporting cyber offenses. The Cyber Crime Cell of Delhi Police and Indore have an online portal for educating the masses on cyber-crimes and also accepting online cyber-crime complaints. The links to these portals are <http://www.cybercelldelhi.in/> and <http://www.indorepolice.org/cyber-crime.php>

Documents Required to File a Cyber Crime Complaint

For Email Based Complaints

- A written brief about the offense
- A copy of the suspected email as received by the original receiver (forwarded emails should be avoided)
- The complete header of the suspected email
- Hard and soft copies of the alleged email and its header
- Ensure that the soft copy is provided in a CD-R

For Social Media Based Complaints

- A copy or screenshot showing the alleged profile/content
- A screenshot of the URL of the alleged content
- Hard and soft copies of the alleged content
- Ensure that the soft copy is provided in a CD-R

For Mobile Application Based Complaints

- A screenshot of the alleged app and the location from where it was downloaded
- The victim's bank statements in case any transactions were made after the incident
- Soft copies of all the aforesaid documents

For Data Theft Complaints

- A copy of the stolen data
- The copyright certificate of the allegedly stolen data
- Details of the suspected employee(s)
- The following documents are required in relation to the suspected employee(s):
 1. Letter of Appointment

2. Non-disclosure Agreement
 3. Assigned list of duties
 4. List of clients that the suspect handles
- The proof of breach of your copyright data
 - Devices used by the accused during his/her term of service (only if available)

For Ransomware/Malware Complaints

- The email ID, phone number or evidence of any other means of communication through which the demand for ransom was made
- In case the malware was sent as an email attachment, screenshots of the email with the complete header of the first receiver

For Internet Banking/Online Transactions/Lottery Scam/Fake Call Related Complaints

- Bank statements of the concerned bank for the last six months
- A copy of the SMSes received related to the suspected transactions
- Copy of the victim's ID and address proof as in bank records

For Online Cheating Complaints

- A printout of the alleged email with its complete header as received by the original receiver (forwarded emails should be avoided)
- Victim's bank statement
- Details of the suspected transactions
- Soft copies of all the aforesaid documents

Annexure VIII⁴⁷¹ - Compensation Procedure and Process

Any compensation for the victim of a crime has to be ordered by the court. Compensation can be sought through the procedure established by the court. It is awarded for material as well as non-material damages.

Material damages include medical expenses, loss of livelihood, *etc.* Non-material damages include pain, suffering, mental trauma, *etc.* In criminal cases, the victims can directly apply for the compensation, and it is the duty of the lawyer representing the victim to demand such compensation.

When an accused is proven guilty, and the court passes an order which contains a fine of any denomination, the court can order such fine or any part of it to be paid to the victim of crime. The fine imposed is utilised to compensate the victim of fine in the following ways.

- a. Compensating for the expenses incurred during litigation
 - This is the essential relief which a victim of a crime must get. Litigation costs in India are very arbitrary. These days, lawyers charge hefty fees. Getting justice at times adds to the burden of the victim. Instead of getting justice, the victim is trapped in the honeycomb of justice delivery system.
 - The court knows this fact, and thus compensates victims by providing them the expenses incurred during litigation.
- b. Compensation for loss or injury to be recovered by the civil court
 - If the court is of the view that the compensation sought is beyond the jurisdiction of the court, the court itself orders the appropriate court to look into the matter.
 - In the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.
- c. Compensation in case of death
 - One might question, who is the victim where death has been caused? As the victim is already dead, who should be compensated for the crime?
 - It is the family of the victim. Think of the mental trauma they might have gone through. Medical expenses incurred, expenses during last rites. What if the victim who died was the sole bread earner of the family?
 - The Court is well aware of such situations. Therefore, the legislature and the judiciary try to do complete justice.
 - Victims are entitled to recover damages from the person sentenced for the loss resulting to them from such death. When any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such a crime.

⁴⁷¹ Available at <https://blog.iplayers.in/compensation-victim-crime-india/>

- d. Compensation of victim of crime in offences like theft, cheating, criminal breach of trust, *etc*

In cases of crime such as theft, cheating, criminal breach of trust, criminal misappropriation, the Court either tries for recovery of goods, and in cases where recovery is not possible court orders for compensation for the price of such goods.

Compensation where fine is not a part of the sentence

The accused person in such case may be ordered by the court to pay a certain sum as compensation to the victim of crime who suffered loss or injury. Indian legal system is victim friendly. Victim's rights are kept at the top of the priority list.

When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

Victim Compensation Scheme

In 2009, the central government gave directions to every state to prepare a scheme which has to be in agreement with the center's scheme for victim compensation. The primary purpose of the scheme is to provide funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

Quantum of compensation under the scheme

It is the court which orders that the victim who suffered loss needs to get compensated. Under the scheme, whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, decides the quantum of compensation to be awarded.

Compensation in cases where the accused is not found guilty or the culprits are not traced

Where the cases end in acquittal or are discharged, and the victim has to be rehabilitated, the court may make a recommendation for compensation.

Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for an award of compensation.

Who is to provide compensation in the above case?

- The State or the District Legal Services Authority shall, after due enquiry, award adequate compensation by completing the inquiry within two months.
- Also, it is the duty of the State or the District Legal Service Authority to provide an immediate first-aid facility or medical benefits to the victim free of cost on the certificate of the police.

What to do in case of inadequate compensation

If the trial Court, at the conclusion of the hearing, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make a recommendation for compensation.

When is the compensation to be provided?

- Along with the duty of the offender, it is the duty of the state too, to compensate the victim. Compensation to the victim of crime can be provided:
 - At the conclusion of the trial. That is on the orders of the court.
 - When inadequate compensation is granted by the lower court to the victim of crime, the Appellate Court might increase the compensation.
 - Where accused is not traceable, it becomes the duty of the state to compensate the victim of the crime.

Central Victim Compensation Fund Scheme (CVCF)

The Central government in 2015 formulated the CVCF scheme to compensate the victims. This is a standard procedure which one might follow. Every state has their own guidelines which decide the procedure. To know the exact step by step procedure, please see your state's guidelines on Victim Compensation Fund.

Step 1 - Making an application before the District/State Legal Service Authority

- An application can be made for temporary or final compensation. It can be filed by the Victims or their dependents or the SHO of the area.
- The application must be submitted along with a copy of the First Information Report (FIR), medical report, death certificate, if available, copy of judgment/ recommendation of court if the trial is over, to the State or District Legal Services Authority

Step 2 - The scrutiny stage.

District Legal Service Authority of every state must first verify the content of the claim. Specific loss, injury, rehabilitation is taken into consideration.

Step 3- Deciding the quantum of compensation to be given to victim of crime

The quantum of compensation to be granted is decided based on the following factors:

- The gravity of the offence and the loss suffered by the victim.
- Medical expenditure incurred during treatment.
- Loss of livelihood as a result of injury or trauma.
- Whether the crime was a single isolated event (for eExample theft) or whether it took place over an extended period of time (example multiple times rape with a woman who has been locked in a house)
- Whether the victim became pregnant as a result of such offence.
- In the case of death, the age of deceased, monthly income, the number of dependents, life expectancy, future promotional /growth prospects etc.
- Any other factor which the Legal Service Authority might deem fit.

Step 4 - Method of disbursement of compensation

- The amount of compensation so awarded shall be disbursed by the respective Legal Service Authority by depositing the same in a Nationalized Bank in the joint or single name of the victim/dependent(s).
- Out of the amount so deposited, 75% (seventy-five percent) of the same shall be put in a fixed deposit for a minimum period of three years.
- The remaining 25% (twenty-five percent) shall be available for utilization and initial expenses by the victim/dependent(s), as the case may be.
- In the case of a minor, 80% of the amount of compensation so awarded, shall be deposited in the fixed deposit account and shall be drawn only on attainment of the age of majority, but not before three years of the deposit.

Annexure IX - Important Helpline Numbers in India for Women

S. No.	Helpline Name	Contact No.	Address	Email Id
1	Women Helpline (All India) - Women In Distress	181 (24 hours, 7 days a week)		
2	Women Helpline Domestic Abuse	1091		
3	Police	100		
4	National Commission For Women (NCW)	011- 26942369, 26944754, 26944740, 26944805, 26944809	Plot-21, Jasola Institutional Area, New Delhi – 110025	ncw@nic.in; complaintcell-ncw@nic.in
5	Delhi Commission For Women	011- 011- 23379181(all working days , 10 AM. to 5:30 PM)	C-Block, 2nd Floor, Vikas Bhawan I. P. Estate, New Delhi-110 002	helpdeskdcw2015@gmail.com;
6	Anti-stalking/Obscene calls	1096		
7	Student / Child Helpline	1098		

Annexure X - Crimes against Women Cells in New Delhi⁴⁷²

Crimes against Women Cells⁴⁷³ deal with crimes targeted on women, like domestic violence, sexual harassment, sexual abuse, molestation, rape, and other gender related crimes. These cells liaison with other service providers to provide counselling (both psychological and legal). Appropriate cases are forwarded to Rescue shelters and Short Stay Homes run by the Government and by non-governmental agencies. The cells have Crisis Intervention Centers which have been set up to deal with cases of rape and sexual abuse. These centers function in conjunction with non-governmental organizations to assist in the medical examination of the victim and to provide assistance in treatment for trauma, counselling and rehabilitation

S.No.	Name/ Address	Phone	
1.	HEADQUARTER	24673366	Special Police Unit for Women & Children, Nanakpura, Moti Bagh New Delhi
2.	NORTH DISTRICT	23962201	Crime Against Women Cell P.S. Sarai Rohilla, Ist Floor, Delhi-7
3.	NORTH-WEST DISTRICT	27232353	Crime Against Women Cell, P.S. Pitampura, Delhi-52
4.	NORTH-EAST DISTRICT	22137210	Crime Against Women Cell, Old Building of PS Nand Nagri, Delhi.
5.	CENTRAL DISTRICT	25737951 Ext. 7411	Crime Against Women Cell P.S. Prasad Nagar Delhi.
6.	NEW DELHI DISTRICT	23361231 Ext. 3447	Crime Against Women Cell Parliament Street, New Delhi-1,
7.	SOUTH DISTRICT	26562731	Crime Against Women Cell, Old PS Malviya Nagar Building, Behind PVR Saket, New Delhi
8.	SOUTH - WEST DISTRICT	25088987	Crime Against Women Cell PS Dwarka Sector 9, First Floor, Near ITL Public School, New Delhi.
9.	SOUTH - EAST DISTRICT	26841500	Crime Against Women Cell, PS Srinivas Puri, New Delhi
10.	EAST DISTRICT	22207950	Crime Against Women Cell P.S. Krishna Nagar, Delhi,

⁴⁷² Available at http://www.spuwac.com/index.php?option=com_content&view=article&id=8&Itemid=28

⁴⁷³ More information available at https://www.unafei.or.jp/publications/pdf/RS_No69/No69_11VE_Deol1.pdf

11.	WEST DISTRICT	25447100 Ext. 4205	Crime Against Women Cell P.S. Kirti Nagar, New Delhi
12.	OUTER DISTRICT	27511753	Crime Against Women Cell, Old Police Station Building, Near JIMS Institute, Sector 3, Rohini, Delhi

Annexure XI- One Stop Crisis Centers⁴⁷⁴

The Ministry of Women and Child Development (MWCD), has formulated a Centrally Sponsored Scheme for setting up One Stop Centre (OSC), a sub-scheme of Umbrella Scheme for National Mission for Empowerment of women including Indira Gandhi Matritav Sahyaog Yojana. Popularly known as Sakhi, the scheme is being implemented since 1st April 2015. The aim of these centers is to provide integrated support and assistance under one roof to women affected by violence, both in private and public spaces, in phased manner.

The Centers have been integrated with a Women Helpline to facilitate access to following services:

- a. Emergency Response and Rescue Services - OSC provides rescue and referral services to the women affected by violence. For this, linkages have been developed with existing mechanisms such as National Health Mission (NHM), 108 service (emergency telephone number), police (PCR Van), so that the woman affected by violence can be rescued from the location and/or referred to the nearest medical facility (public/ private) or shelter home.
- b. Medical assistance - Women affected by violence are referred to the nearest Hospital for medical aid/examination which should be undertaken as per the guidelines and protocols developed by the Ministry of Health and Family Welfare.
- c. Assistance to women in lodging First Information Report (FIR)/Non Cognizable Report (NCR)/Domestic Incident Report (DIR)
- d. Psycho-social support/ counselling - A skilled counsellor providing psycho-social counselling services is available on call. Counsellors follow a prescribed code of ethics, guidelines and protocols in providing counselling services.
- e. Legal aid and counselling - To facilitate access to justice for women affected by violence, legal aid and counselling are provided at OSC through empanelled Lawyers or National/ State/District Legal Service Authority. The aggrieved woman is provided with an advocate of her choice, in case she wants to engage the same to assist the State Prosecutors in trying her case. It is the responsibility of the Lawyer /Prosecutor to simplify legal procedures for the aggrieved woman and advocate for her exemption from court hearings. In case the trial or inquiry relates to an offence of rape as defined under section 376, 376A - D Indian Penal Code (IPC), it is the duty of the Prosecutors trying the case to complete the inquiry or trial as far as possible within a period of two months from the date of filing of charge sheet.
- f. Shelter - The OSC provides temporary shelter facility to aggrieved women. For long term shelter requirements, arrangements have been made with Swadhar Greh/Short Stay Homes (managed/affiliated with government/NGOs). Women affected by violence along with their children (girls of all ages and boys up till 8 years of age) can avail temporary

⁴⁷⁴ Available at <http://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/poorna-shakti-kendras>

shelter at the OSC for a maximum period of 5 days. The admissibility of any woman to the temporary shelter would be at the discretion of Centre Administrator.

- g. Video Conferencing Facility - To facilitate speedy and hassle-free police and court proceedings the OSC provides video conferencing facility (through Skype, Google Conferencing etc.). Through this facility if the aggrieved woman wants, she can record her statement for police/ courts from OSC itself, using audio-video electronic means as prescribed under sections 161(3)⁴⁷⁵, 164(1)⁴⁷⁶ and 275(1)⁴⁷⁷ of the Code of Criminal Procedure and section 231(1), in line with Order XVIII Rule 4 of the Code of Civil Procedure. This facility will be provided only after consultation among Superintendent of Police, District and Sessions Judge of the concerned district (place of incident).

Accessing the One Stop Centre:

- a. A woman affected by violence can access OSC in the following manner:
- b. By herself; or
- c. Through any person including any public spirited citizen, public servant (as defined under section 21 of Indian Penal Code, 1860), relative, friend, NGO, volunteer etc., or through Women Helpline integrated with police, ambulance and other emergency response helplines.

As soon as the complaint is registered, a text message (SMS /Internet) would be sent to the District Police Officer/Police Officer/ Child Development Protection Officer/ Station House Officer (SHO)/ District Magistrate(DM)/ Superintended of Police(SP)/ Deputy Superintended of Police(DSP) /Chief Medical Officer(CMO) /Police Officer(PO) of the district/area as required. When an aggrieved woman approaches the OSC for help either in person or if anybody approaches on her behalf, the case details will be fed into a system as per the prescribed format and a Unique ID Number will be generated.

⁴⁷⁵ Section 161 (3) talks about Examination of witnesses by police. It says the police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

⁴⁷⁶ Section 164(1) talks about Recording of confessions and statements. It says that any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation or at any time afterwards before the commencement of the inquiry or trial: provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

⁴⁷⁷ Section 275(1) talks about record in non-warrant case. In all warrant-cases tried before a Magistrate, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate himself or by his dictation in open Court or, where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

Location and Contact Details of One-Stop Centres

S.No.	States/UTs	District	Sakhi-One Stop Centre Location	Contact No.	Email
1.	Andaman & Nicobar Islands (UT) (1)	South Andaman	One Stop Centre, JG 6-Type V Quarter, Near Ayush (Govt.) Hospital, Junglighat, Port Blair, South Andaman District, Andaman & Nicobar Islands	03192230504	sakhiandaman@gmail.com
2.	Andhra Pradesh (13)	Krishna	One Stop Centre, Shaik Raja Sahib Municipal Maternity Hospital, Kothapet, Vijaywada City, Krishna District, Andhra Pradesh	8662566589	apsrcw@gmail.co m
		Chittoor	One Stop Centre, RIMS-General Hospital, Municipal Maternity Ward, Chittoor City, Chittoor District, Andhra Pradesh	08572-232444	apsrcw@gmail.co m
		Srikakulam	One Stop Centre, RIMSGeneral Hospital, Balaga, Srikakulam City, Srikakulam District, Andhra Pradesh532001	8919596202	apsrcw@gmail.co m
		Anantapur	One Stop Centre, Room No.12&13, Trauma Care, Upstairs, Emergency Centre, Govt. General Hospital, Anantapur City, Anantapur District, Andhra Pradesh515001	08554-222205	apsrcw@g mail.co m
		Kurnool	One Stop Centre, Room No.214, Upstairs, Ntr Vidya Seva, Karyalayam, Govt.General Hospital, Kurnool City, Kurnool, District, Andhra Pradesh581002	08518-255057	apsrcw@gmail.co m

		Kadapa	One Stop Centre, Second Floor, Near Administrative Office, O.P.Block,RIMS General Hospital, Kadapa City, Kadapa District, Andhra Pradesh-516001	8919596202	apsrcw@gmail.co m
		East Godavari	One Stop Centre, Room No:7&8, Outpatients Super Specialty, Second Floor, Govt. General Hospital, Kakinada, East Godavari District, Andhra Pradesh-533004	0884-2368446	apsrcw@gmail.co m
		Nellore	One Stop Centre, DSR Govt. Hospital, SPS, Nellore City, Nellore District, Andhra Pradesh	0861-2347990	apsrcw@gmail.co m
		Guntur	One Stop Centre, Government General Hospital, Ward No.117, Guntur City, Guntur District, Andhra Pradesh	0863-2233525	apsrcw@gmail.co m
		Vishakapatnam	One Stop Centre, King George Hospital, Maternity Hospital, Ground Floor, Near Collector Hospital, Vishakapatnam City, Vishakapatnam District, Andhra Pradesh	0891-2654575	apsrcw@gmail.co m
		Vizianagaram	One Stop Centre, The Protection Officer PWDV Act2005 Cell,Near 29th Ward, Maharaja District Govt. Hospital, Vizianagaram, Vizianagaram District, Andhra Pradesh-535003	08922-277986	apsrcw@gmail.co m

		Prakasam	One Stop Centre, Second Floor, Ward No.211,RIMS Hospital, Ongole City,Prakasam District, Andhra Pradesh	08592-284506	apsrcw@gmail.co m
		West Godavari	One Stop Centre, Govt.General Hospital, DV Cell, Eluru City, West Godavari District , Andhra Pradesh	08812-223218	apsrcw@gmail.co m
3.	Arunachal Pradesh (2)	Papumpare	One Stop Centre, B-Sector, Near Police Station, Naharlagun, Papumpare District, Arunachal Pradesh Will be shortly shifted to: Tomo Riba State Hospital(TRSH), Naharlagun, Papumpare District, Arunachal Pradesh	0360-2217216	welfaresocial71@yahoo.com
		East Pasighat	One Stop Centre, High Region, Near General Hospital, Pasighat, East Siang District ,Arunachal Pradesh	0360-2217216	welfaresocial71@yahoo.com
4.	Assam (5)	Kamrup Metropolitan	One Stop Centre, Rajgarh Road, Byelane No.-2,H.No.-1 Chandmari, Guwahati, Kamrup Metropolitan District,Assam-781003	8811077425	srcwassam@gmail.com
		Cachar	One Stop Centre, Nivedita Nari Sangathan, Silchar, Cachar District, Assam	9435070157	srcwassam@gmail.com
		Jorahat	One Stop Centre, Prerona Pratibandhi Shishu Vikash Kendra, Chinamara, Jorahat District,Assam	9435352138	srcwassam@gmail.com
		Kokrajhar	One Stop Centre, District RNB	9435026430	srcwassam@gmail.com
			Hospital, Kokrajhar, Kokrajhar District,Assam		il.com
		Nagaon	Gram Vikas Parishad, Rangloo, Nagaon,Nagon District,Assam	9435060538	srcwassam@gmail.com

5.	Bihar (7)	Patna	One Stop Centre, Chajjubagh Executive Bungalow, Patna District, Bihar	01622547843 ,2547 967,2547968, 2547969	support@wcdbih ar.org.in
		Begusarai	One Stop Centre, Collectorate Campus, Above DM Begusarai office,Begusarai City, Begusarai District, Bihar	01622547843 ,2547 967,2547968, 2547969,840 6 001052	support@wcdbih ar.org.in
		Darbhanga	One Stop Centre, Collectorate Campus, Darbhanga City, Darbhanga District, Bihar	01622547843 ,2547 967,2547968, 2547969	support@wcdbih ar.org.in
		Gaya	Collectorate, Gaya District, Gaya-823001,Bihar	9774168011	support@wcdbih ar.org.in
		Saran	Collectorate, Saran,Chapra- 841301,Bihar	9774168029	support@wcdbih ar.org.in
		Purnea	Collectorate, Purnea,Bihar	01622547843 ,2547 967,2547968, 2547969	support@wcdbih ar.org.in
		Gopalganj	One Stop Centre, Collectorate Campus, Near SDO residence, Gopalganj City, Gopalganj District, Bihar	01622547843 ,2547 967,2547968, 2547969,943 1	support@wcdbih ar.org.in
6.	Chandigarh (UT) (1)	Chandigarh (UT)	One Stop Centre, Nari Niketan, Sector 26, Chandigarh (UT)	0172- 2793026	oscchd@gmail.co m
7.	Chhattisgarh (27)	Raipur	One Stop Centre, District Hospital, Janta Colony, Raipur City,Raipur District, Chhattisgarh – 492001	0771- 4061215	raipursakhi@181 chhattisgarh.in
		Balod	One Stop Centre, Jhalmala Primary Centre, Balod, Balod District, Chhattisgarh	0771- 4061215	raipursakhi@181 chhattisgarh.in

		Baloda Bazar	One Stop Centre, Panchsheel Nagar, Baloda Bazaar, Baloda Bazaar District, Chhattisgarh	0771- 4061215	raipursakhi@181 chhattisgarh.in
		Balrampur	One Stop Centre, Behind Planning Office, BRT Training Centre, School Colony, Balrampur, Balrampur District, Chhattisgarh	0771- 4061215	raipursakhi@181 chhattisgarh.in
		Bastar	One Stop Centre, RTO Bhawan, Near Akashvani Kendra, Bastar, Bastar District, Chhattisgarh	0771- 4061215	raipursakhi@181 chhattisgarh.in
		Bemetara	One Stop Centre, District Hospital, New Dharmshala Bhawan, Bemetara, Bemetara District, Chhattisgarh	0771- 4061215	raipursakhi@181 chhattisgarh.in
		Bijapur	One Stop Centre, Near District Hospital, Bijapur, Bijapur District, Chhattisgarh	0771- 4061215	raipursakhi@181 chhattisgarh.in
		Bilaspur	One Stop Centre, Nutan Chowk Sarkanda, Opp. Balika Greh, Bilaspur, Bilaspur, District, Chhattisgarh	0771- 4061215	raipursakhi@181 chhattisgarh.in
		Dantewada	One Stop Centre, Shakti Mahila Sahaktikaran Kendra, Kailash Nagar, Dantewada District, Chhattisgarh	0771- 4061215	raipursakhi@181 chhattisgarh.in
		Dhamtari	One Stop Centre, Old Kendriya Vidhyalaya Bhawan, Collectorate Road, Rudri, Near Police Station Dhamtari, Dhamtari District, Chhattisgarh	0771- 4061215	raipursakhi@181 chhattisgarh.in
		Durg	One Stop Centre, Near District Hospital, CMHO Office, Durg, Durg District, Chhattisgarh	0771- 4061215	raipursakhi@181 chhattisgarh.in

		Gariyaband	One Stop Centre, Collector Office, Below Bal Kalyan Samiti Office, Gariyaband, Gariyaband District, Chhattisgarh	0771-4061215	raipursakhi@181 chhattisgarh.in
		Jangir-Champa	One Stop Centre, ICDS Bhawan , Shahari, Jangir-Champa, Jangir-Champa District, Chhattisgarh	0771-4061215	raipursakhi@181 chhattisgarh.in
		Jashpur	One Stop Centre, Near District Hospital, Bhagalpur Road, Jashpur, Jashpur District, Chhattisgarh	0771-4061215	raipursakhi@181 chhattisgarh.in
		Kabirdham	One Stop Centre, District Hospital, Paying Ward, Kabirdham, Kabirdham District, Chhattisgarh	0771-4061215	raipursakhi@181 chhattisgarh.in
		Kanker	One Stop Centre, Near Gyani Dhaba, Bardebata, Kanker,	0771-4061215	raipursakhi@181 chhattisgarh.in
			Kanker District, Chhattisgarh		
		Kondagaon	One Stop Centre, District Nishaktijan Kendra, Kondagaon, Kondagaon District, Chhattisgarh	0771-4061215	raipursakhi@181 chhattisgarh.in
		Korba	One Stop Centre, H.No.482,Kharmora Road, Near Podi Bahar Road,Korba, Korba District, Chhattisgarh	0771-4061215	raipursakhi@181 chhattisgarh.in
		Koriya	One Stop Centre, District Hospital, Koriya, Koriya District, Chhattisgarh	0771-4061215	raipursakhi@181 chhattisgarh.in
		Mahasamund	One Stop Centre, District Hospital, G.A.N. Training Centre, Mahasamand, Mahasamand District, Chhattisgarh	0771-4061215	raipursakhi@181 chhattisgarh.in
		Mungeli	One Stop Centre, District Hospital Ramgarh, Mungeli, Mungeli District, Chhattisgarh	0771-4061215	raipursakhi@181 chhattisgarh.in

		Narayanpur	One Stop Centre, Old Planning Office, Bijapur, Bijapur District, Chhattisgarh	0771-4061215	raipursakhi@181chhattisgarh.in
		Raigarh	One Stop Centre, Near Atarmuda TV Tower, Raigarh, Raigarh District, Chhattisgarh	0771-4061215	raipursakhi@181chhattisgarh.in
		Rajnandgaon	One Stop Centre, Near Collector Office, Mahesh Nagar, Rajnandgaon, Rajnandgaon District, Chhattisgarh	0771-4061215	raipursakhi@181chhattisgarh.in
		Sarguja (Ambikapur)	One Stop Centre, F-2, Gaurav Path, Ambikapur, Ambikapur District, Chhattisgarh	0771-4061215	raipursakhi@181chhattisgarh.in
		Sukuma	One Stop Centre, Old District Hospital, Opp. Mini Stadium, Sukuma, Sukuma District, Chhattisgarh	0771-4061215	raipursakhi@181chhattisgarh.in
		Surajpur	Old Livelihood College, Opp. Shiv Park, Surajpur, Surajpur District, Chhattisgarh	0771-4061215	raipursakhi@181chhattisgarh.in
8.	Daman & Diu	Diu	One Stop Centre, Govt. Primary Health Center, Near S.T. Bus Station, Diu, Daman & Diu (UT)	09824829977	masskff@gmail.c om
9.	Dadra & Nagar Haveli (UT) (1)	Diu	One Stop Centre, Govt. Primary Health Center, Near S.T. Bus Station, Diu, Daman & Diu (UT)	09824829977	masskff@gmail.c om
10.	Goa (2)	North Goa	One Stop Centre, Goa Medical College, NH-17, Bambolim, Tiswadi, North Goa District, Goa-403202	0832-2458700	dir-wcd.goa.nic.in

11.	Gujarat (3)	Rajkot	One Stop Centre,Civil Hospital Campus,New Animal Hostel Building,Rajkot, Rajkot District,Gujarat	9925152595	info@grcgujarat.org
		Kutchh	One Stop Centre, G.K.General Hospital, Kutchh, Kutchh District, Gujarat	02832221195	info@grcgujarat.org
		Sabarkantha	One Stop Centre, First Floor, GMERS, Sir Pratap General Hospital, Himmatnagar,Sabarkantha, Sabarkantha District,Gujarat-383001	9925152595	oscmershimmatnagar@gmail.co m
12.	Haryana (7)	Karnal	One Stop Centre, Mahila Complex, Behind State Transport Corporation, Bus Stand, Karnal,Karnal District, Haryana	01842270175 , 08396955213	Pokrl.wcd@gmail .com
		Bhiwani	One Stop Centre, District Child Protection Office, Bhiwani, Bhiwani , District,Haryana-127021	01664243956 , 7357428352	Pobhw.wcd@gma il.com
		Gurugram	One Stop Centre, Civil Hospital, Gurugram, Gurugram District, Haryana- 122001,Phone: 70656192903	01242331148, 70656192903	Pogrgwcd.123@g mail.com
		Faridabad	One Stop Centre, First floor in B.K Hospital, NIT, Faridabad, Faridabad District, Haryana -121001	01292265199, 9999367552	Pofbd.wcd@gmai l.com
		Hissar	One Stop Centre, Police Hospital in Women Police Station, Hissar, Hissar District, Haryana -125001	01662239097, 09416588635	Pohsr.wcd@gmai l.com
		Narnaul	H.No. 772, 1st Floor, Sector1, Narnaul, Narnaul District, Haryana-123001	01282252331, 82950 13333	Ponrl.wcd@gmail .com
		Rewari	One Stop Centre, First Floor in the Trauma Centre General Hospital, Rewari, Rewari	01274223694, 09671284402	Porewari.wcd@g mail.com

				District, Haryana-123401		
13.	Himachal Pradesh		Solan	One Stop Centre , Red Cross Building, Zonal Hospital, Solan- 173212, Himachal Pradesh	01792-220181	neelam_mehta@emri.in
14.	Jharkhand (3)		Ranchi	One Stop Centre, Ranchi Institute of Neuro-Psychiatry and Allied Sciences (RINPAS), Kanke, Kanke District, Ranchi , Jharkhand-834006	06512451911, 9931523455	oscsakhirinpas@gmail.com
			East Singhbhum	One Stop Centre, Red Cross Bhavan 3rd floor – Sakchi, Near Jubilee Park Gate, Jamsshedpur, East Singhbhum District, Jharkhand-831001	06572221414, 7209407209	onestopjamshedpur2@gmail.com
			Dhanbad	One Stop Centre, One Stop Centre, Red Cross Bhavan, Behind Golf Ground Dhanbad, Dhanbad District Jharkhand-831001	09334261037	singh2953@gmail.com
15.	Karnataka (4)		Udupi	One Stop Centre, Stree Sevaniketana District Hospital premises, Udupi, Udupi District, Karnataka	080-22353992	deputysecretary123@gmail.com
			Dharwad	One Stop Center, District Hospital, Special Treatment Unit, KIMS Hospital , Hubli Dharwad, Dharwad District, Karnataka -580020	2270020	wcdmvcg.udp@gmail.com
			Chamaraj Nagar	One Stop Centre, Special Treatment Unit, District Hospital 2nd Floor B.Rachaiah Jodi Rd., Chamaraja Nagara, Chamaraja Nagara District, Karnataka-571313	08226-224720	ddwcdchnagar@gmail.com

16.	Kerala (1)	Thiruvananthapuram	One Stop Centre, Nirbhaya Cell Office, House#40,First Floor, Chabakanagar,Bakery Junction,Thiruvananthapuram , Thiruvananthapuram District, Kerala-695001	0471-2331059	nirbhayacell@gmail.com
17.	Madhya Pradesh (18)	Indore	One Stop Centre, K.E.I. Compound, Opp. Narsingh School, Indore, Indore, District, Madhya Pradesh	9827321705	socialdovtwe@gmail.com
		Bhopal	One Stop Centre, Near State	9425037714	socialdovtwe@gmail.com
			Bank of India, J.P.Hospital premises, Bhopal City, Bhopal District, Madhya Pradesh		mail.com
		Burhanpur	One Stop Centre, Near Nehru Hospital, Chowk Marg, Putla Crossroad, Burhanpur, Burhanpur District, Madhya Pradesh	9752795255	socialdovtwe@gmail.com
		Chindwada	One Stop Centre, Old Church Compound, Girls Hostel Premises, Nagpur Road, Chindwada, Chindwada District, Madhya Pradesh	9424366262	socialdovtwe@gmail.com
		Dewas	One Stop Centre, District Hospital Premises, Dewas, Dewas District, Madhya Pradesh	9589125215	socialdovtwe@gmail.com
		Gwalior	One Stop Centre, J.A.H. Campus, Opp. T.V.Ward Compound, Gwalior City, Gwalior District, Madhya Pradesh	9826228404	socialdovtwe@gmail.com
		Hoshangabad	One Stop Centre, District Hospital, Hoshangabad City, Hoshangabad District, Madhya Pradesh	9826356898	socialdovtwe@gmail.com

		Jabalpur	One Stop Centre, Family Councelling Centre, Opp.Indra Mrket, Near Central Jail,Jabalpur City, Jabalpur District, Madhya Pradesh	9584990162	socialdovtwe@gmail.com
		Katni	One Stop Centre, District Hospital Premises, Bhartiya State Bank Main Branch,Katni City, ,Katni District, Madhya Pradesh	8966094348	socialdovtwe@gmail.com
		Khandwa	One Stop Centre, State Animal Hospital Premises, Opp. District Hospital, Behind Hanuman Mandir Backyard Padawa, Khandwa, Khandwa District, Madhya Pradesh	9098807773	socialdovtwe@gmail.com
		Morena	One Stop Centre, New Housing Board Colony, Morena City, Morena District, Madhya Pradesh	9826222582	socialdovtwe@gmail.com
		Ratlam	One Stop Centre, Solanki Niwas, 151/11 Ground Floor,Marimata Chauraha, Haat ki Chowki, Ratlam, Ratlam District, Madhya Pradesh	9425992575	socialdovtwe@gmail.com
		Rewa	One Stop Centre, H.No.12/652,Bajrang Nagar, Rewa, Rewa District, Madhya Pradesh	9407820408	socialdovtwe@gmail.com
		Sagar	One Stop Centre, District Hospital, Hall No.8,Sagar City, Sagar District,Madhya Pradesh	8305380922	socialdovtwe@gmail.com
		Satna	One Stop Centre, Near Kanya Ddhavari School, Satna, Satna District, Madhya Pradesh	9424762973	socialdovtwe@gmail.com
		Shadol	One Stop Centre, Ward No.12 Bandganaga Bypass, Near	8435860558	socialdovtwe@gmail.com

			Sai Gurukul, Child Protection Bhawan School, Shahdol, Shahdol District, Madhya Pradesh		
		Singrauli	One Stop Centre, A.N.M.Training Centre, N.C.L.Ground, Behind J.P.K., Singrauli, Singrauli, District, Madhya Pradesh - 486886	9893824557	socialdovtwe@gmail.com
		Ujjain	One Stop Centre, Madhav Nagar Hospital,Free Ganj, Ujjain, Ujjain District, Madhya Pradesh	9926017866,0 734-2530517	socialdovtwe@gmail.com
18.	Maharashtra (10)	Akola	One Stop Centre, Govt.District Hospital, Bhandaraj BK, Akola, Akola District, Maharashtra -444002	022- 22814906	dy.commissioner wd@yahoo.com
		Amravati	One Stop Centre, Govt.Civil Hospital, Khaparde Bagicha, Maltekdi, Amravati, Amravati District , Maharashtra - 444606	022- 22814906	dy.commissioner wd@yahoo.com
		Nasik	One Stop Centre, Govt. Vatsalya Hostel for Women, Nasik, Nasik District, Maharashtra	022- 22814906	dy.commissioner wd@yahoo.com
		Pune -1	One Stop Centre, Rajiv Gandhi Hospital of Municipal Corporation, Nawanagar, Salwe Nagar, Yerawada, Pune,Pune District, Maharashtra - 411006	022- 22814906	dy.commissioner wd@yahoo.com
		Pune -2	Data to be updated		
		Thane	Data to be updated		
		Nanded	One Stop Centre, Ravidas Bhawan,Shastri Nagar,Nanded, Nanded District,Maharashtra.	7038064090	sakhioscnanded@gmail.com
		Satara	One Stop Centre, Government Begar Home,Satara , Satara District,Maharashtra	02162- 239346	dwcdosc.satara@gmail.com

		Raigarh	One Stop Centre, Civil Hospital, Alibag, Raigarh, Raigarh District, Maharashtra	02141-2225321; 9673125066	oscraigad@gmail .com
		Ahmadnagar	One Stop Centre, Sankalp Pratishthan Savalee, Plot No.3, Kedgaon, Ahmednagar , Ahmednagar District, Maharashtra	02412550289 9890969315	oscamednagar@gmail.com
		Aurangabad	One Stop Centre, Municipal Corporation Hospital, Aurangabad, Aurangabad District, Maharashtra	9404950079	Osc.aurangabad@gmail.com
		Nagpur	One Stop Centre, Bharosa Centre, Nagpur, Nagpur District, Maharashtra	022-22814906	dy.commissionerwd@yahoo.com
19.	Manipur (1)	Thoubal	One Stop Centre, Thoubal Mini Secretariat Complex, Thoubal, Thoubal District, Manipur	0385-2450513	to be updated
20.	Meghalaya (2)	Shillong	One Stop Centre, Ganesh Das Hospital, Shillong City, Shillong District, Meghalaya	0364-2591075	megosegdh@gmail.com
		West Garo Hills	One Stop Centre, TE-Tengkol, Hawakhana, Tura, West Garo Hills, Meghalaya 794001	9615456188	oscctrura@gmail.com
21.	Mizoram (1)	Aizwal	One Stop Centre, Khatla, Aizwal Mizoram	03892312735	whlmizoram@gmail.com
22.	Nagaland (2)	Dimapur	One Stop Centre, District Hospital, Below Anganwadi Centre, Hospital Colony, Dimapur, Dimapur District, Nagaland-797112	03862-237448, 9485239094	nld.srcw@gmail.com, sakhiosc.dmp@gmail.com
		Kohima	One Stop Centre, 4th Floor, K.M Building, Upper Chandmari, Next to Bethel hospital, Kohima, Kohima District, Nagaland-797001	0370-2240146, 9856087726	nld.srcw@gmail.com, sakhiosc.kohima@gmail.com
23.	Odisha (1)	Bhubaneswar	One Stop Centre, Capital Hospital, Bhubaneswar City, Bhubaneswar District, Odisha	06742397703	onestopcentre.bb sr@gmail.com

24.	Puducherry (UT) (1)	Puducherry	One Stop Centre, Rajiv Gandhi Hospital, 100 Feet Road, Ellaipillaichavadi, Puducherry	04132244964 9842349918, 9894132392	wcd.pon@nic.in
25.	Punjab (6)	Bathinda	One Stop Centre, D-1 Civil Station, Near Income Tax Office, Bathinda City, Bathinda District, Punjab	9415440810	oscsakhibti2017@gmail.com
		Gurdaspur	One Stop Centre, New Civil Hospital, Jeewanwal Babri, Gurdaspur City, Gurdaspur District, Punjab-143521	01874-240165	oscgsp@gmail.com
		Jalandhar	One Stop Centre, MCH Ward, Civil Hospital, Jalandhar City, Jalandhar District, Punjab	0181-2230181	oscjalandhar@gmail.com
		Patiala	One Stop Centre, Red Cross Society, Jail Road Near Environment Park, Patiala, Patiala District, Punjab 147001	01752358713	oscpatiala@gmail.com
		SBS Nagar	One Stop Centre, Civil Hospital, Floor #2, Room #9, Shaheed Bhagat Singh Nagar, Bhagat Singh Nagar District, Punjab	01823-298322	oscsbsnagar@gmail.com
		Shri Muktsar Sahib	One Stop Centre, Civil Hospital, Room No. 105, Sri Muktsar Sahib, Sri Muktsar Sahib District, Punjab 152026	9814041223	dpomuksar@yahoo.in
26.	Rajasthan (15)	Ajmer	Raj Lok Sewa Ayog, Ajmer	0145-2627154	powejm@gmail.com
		Baran	One Stop Centre, Room No.10,11, First Floor, Mother & Child Health Bhawan, District Hospital, Baran, Baran District, Rajasthan	9783130752	icdsbaran@gmail.com
		Bhilwara	One Stop Centre, Mahatma Gandhi Hospital Premises, Bhilwara, Bhilwara District, Rajasthan -311001	8058058397, 01482233020	oscbhilwara@gmail.com

		Bikaner	P.B.M. Hospital premises,Bikaner	9950333025	po.we.bika@gmail.com
		Dholpur	District Hospital Premises, Dholpur City, Dholpur District	05642220015, 9461072118	icdsdholpur@yahoo.in
		Jaipur	One Stop Centre, Govt. Jaipur Hospital Premises, Jaipur, Jaipur District, Rajasthan	01412553763, 2553764	wedjpcl@gmail.com
		Jalore	Dist Hospital,Jalore City, Jalore District,Rajasthan	9829796449	powejalore@gmail.com
		Jhunjhunu	One Stop Centre Red Cross Society Building, BDK Govt. Hospital, Jhunjhunu , Jhunjhunu District, Rajasthan	0159-232453	viplavneola@gmail.com
		Hanumangarh	One Stop Centre, Mahatma Gandhi Smriti Zila Hospital Hanumangarh, Hanumangarh District, Rajasthan -230130	01552-230130	sakhihnh@gmail.com, icdshmh@gmail.com
		Karauli	District Hospital, Karauli City, Karauli District, Rajasthan	9413201551	pokaroli@gmail.com
		Tonk	Mother and Child Health Center, Tonk City, Tonk District, Rajasthan	9929738386	powetonk@gmail.com
		Pali	Regional Bangar District Hospital, Pali City, Pali District, Rajasthan	998339817	ddicdspali002@gmail.com
		Pratapgarh	District Hospital Premises, Pratapgarh City,Pratapgarh, Rajasthan	9462779001	popratapgarh@gmail.com
		Rajsamand	State R.K. Hospital , Rajsamand City, Rajsamand District, Rajasthan	9983987188,0295-2221728	Ddrajsamand.wcd@rajasthan.gov.in

		Chhittorgarh	Rajkiya Saavliyaji District Hospital, Chhittorgarh City, Chhittorgarh District, Rajasthan	0142-256674	pochittor@gmail.com
27.	Sikkim	Gangtok	One Stop Centre, Lumsey, 5th Mile, Tadong, Gangtok, District, Sikkim	0359-2280100	wcdsikkim@gmail.com
28.	Tamil Nadu	Chennai	One Stop Centre, Tambaram Deptt.of Social Welfare, No.6,Home Road, Tambaram Sanitorium, Chennai, Tamil Nadu	04422232341	shtbm0081@gmail.com
29.	Telangana	Nizamabad	One Stop Centre, Nizamabad District Hospital, Nizamabad District, Telangana	040-23733848	osc.pmu.telangana@gmail.com
		Adilabad	One Stop Centre, Adilabad District Hospital, Adilabad District, Telangana	040-23733848	osc.pmu.telangana@gmail.com
		Karimnagar	One Stop Centre, Karimnagar	040-	osc.pmu.telanga
			District Hospital, Karimnagar, Karimnagar District, Telangana	23733848	na@gmail.com
		Khammam	One Stop Centre, Khammam District Hospital, Khammam, Khammam District, Telangana	040-23733848	osc.pmu.telangana@gmail.com
		Mahboobnagar	One Stop Centre, Mahboobnagar District Hospital, Mahboobnagar, Mahboobnagar District, Telangana	040-23733848	osc.pmu.telangana@gmail.com
		Medak	One Stop Centre, Medak District Hospital, Medak, Medak District, Telangana	040-23733848	osc.pmu.telangana@gmail.com
		Nalgonda	One Stop Centre, Department of Ayush, District Government Hospital, Nalgonda, Nalgonda District,	04023733848, 08682222566	osc.pmu.telangana@gmail.com

			Telangana-508001		
		Rangareddy	One Stop Centre, Rangareddy District Hospital, Rangareddy, Rangareddy District, Telangana	040-23733848	osc.pmu.telangana@gmail.com
		Warangal	One Stop Centre, Warangal District Hospital, Warangal, Warangal District, Telangana	040-23733848	osc.pmu.telangana@gmail.com
30.	Tripura	West Tripura	One Stop Centre, Office Of Tripura Commission for Women, HGB Road, Melarmath, Agartala, West Tripura District, Tripura	9774499381 03812318967	tripuracommissionforwomen@gmail.com
31.	Uttar Pradesh (17)	Banda	One Stop Centre, District Hospital, Civil Lines, Banda, Banda District, Uttar Pradesh 210001	8795813206	sudhiricps@gmail.com
		Agra	One Stop Centre, Raja Mandi Chauraha, Mahila Chikitsalaya, Asha Jyoti Kendra, Agra, Agra District, Uttar Pradesh	7235004607	dpo_agra@rediffmail.com
		Allahabad	One Stop Centre, Rani Laxmi Bai Asha Jyoti Kendra, Dr. Kaatju Road, Samira Hotel, Behind Parivar Niyojan Kendra, Allahabad, Adilabad District Uttar Pradesh	7235004604	dpoalld09@gmail.com
		Bareilly	One Stop Centre, Asha Jyoti Kendra, Near Khurram Gohotiya, opposite Mental Hospital, Bareilly, Bareilly District, Uttar Pradesh	7235004602	provisionbar@gmail.com

		Ghaziabad	One Stop Centre, MMG Hospital AJK, Near Shambu Dayal Degree College Ghaziabad, Ghaziabad District Uttar Pradesh	7235004603	dpoghaziabad2gmail.com
		Ghazipur	One Stop Centre, CMO office, Adarsh Nagar, Gora Bazar, Janpath, Ghazipur, Ghazipur District, Uttar Pradesh	7235004600	dpogzp94@gmail.com
		Gorakhpur	One Stop Centre, BRD Medical College, Thana Gulaahrioya, Gorakhpur, Gorakhpur District, Uttar Pradesh	7235004590	provationgkp@gmail.com
		Jhansi,	One Stop Centre, Rani Laxmi Bai Asha Jyoti Medical College Complex, Jhansi, Jhansi District, Uttar Pradesh	0510370226	dpojhsrajsharma@gmail.com
		Kannauj	One Stop Centre, Vinod Dixit Hospital, Makrand Nagar, GP Road, Kannauj Kannauj District, Uttar Pradesh	7235004554	provationkannauj@gmail.com
		Kanpur	One Stop Centre, Rani Laxmi	7235004547	dpokanpur@gmail.com
			Bai Asha Jyoti Medical College, Sankraamad Rog Sansthan, Gol Chauraha, Kanpur, Kanpur District, U.P.		l.com
		Lucknow	One Stop Centre, Lok Bandhu Hospital, AKJ LDA Kanpur Road Yojna, Lucknow, Uttar Pradesh	7235004513	lkodpo34@gmail.com
		Mirzapur	One Stop Centre, DPO Office, Next to Collectorate Treasury, Mirzapur District, Uttar Pradesh - 231001	9506600723, 0542-253048	mztdpo@gmail.com

		Meerut	One Stop Centre, Sardar Ballabh Bhai Patel Chikitsalya, Gadh Road, Meerut, Meerut District, Uttar Pradesh	7235004568	pandeyesudhakars haran@gmail.co m
		Muzaffarnagar	One Stop Centre, Community Health Centre, Vikas Khand, Sadar, Muzaffarnagar. Muzaffarnagar District, Uttar Pradesh	9454465195	dpomzn1@gmail.com
		Pilibheet,	One Stop Centre, District Hospital, Pilibheet, Pilibheet District, Uttar Pradesh	9450229760	probationofficepb t@gmail.com
		Sahajahanpur	One Stop Centre, Women Hospital Complex, Shahjahanpur, Shahjahanpur District, Uttar Pradesh	9452877281	districtprobationo fface@gmail.com
		Varanasi	One Stop Centre, Pandit Deen Dayal Hospital Near Mahaveer Mandir, Varanasi, Varanasi, District Uttar Pradesh	7235004581	dpovaranasi1@g mail.com
32.	Uttarakhand (2)	Haridwar	One Stop Centre, CCR, Hari ki Pauri, Haridwar, Haridwar District Uttarakhand - 249401	01334-221166	samarpanhealth @gmail.com
		Dehradun	One Stop Centre, Survey Chowk, Dehradun-2480015, Uttarakhand	To be updated	onestopcentredd m@gmail.com
		Nainital	One Stop Centre, Govt. Medical College, Haldwani, Nainital District, Uttarakhand	01334-221166	samarpanhealth @gmail.com
		Udham Singh Nagar	One Stop Centre, Near G.G.I.C., Fazalpur, Mehraulla, Rudarpur-263153, Udham Singh Nagar, Uttarakhand	05944-240426	oscusnagar@gm ail.com

ANNEXURE XII - List of Short Stay Institutions for Women in Delhi⁴⁷⁸

The short stay institutions are temporary shelter facility for aggrieved women. These are also referred to as Swadhar Greh and are managed/affiliated with government or Non-Government Organizations. Women affected by violence along with their children (girls of all ages and boys up till 8 years of age) can avail temporary shelter at these institutions for a maximum period of 5 days. The admissibility of any woman to the temporary shelter would be at the discretion of Centre Administrator.

- 1) Mahila Dashata Samiti
D-2/45, Kidwai Nagar (W), New Delhi-
23, Phone no. 24102067
Location:-
31X, Karkadooma Institutional Area, New Delhi-92
TelePhone. 011-22375113

- 2) All India Women's Conference
Address - Sarojini House, 6,
Bhagwan Das Rd, Bhagwan Das Lane,
Mandi House, New Delhi, Delhi 110001
Contact - 011 2338 9680

- 3) Short Stay Home For Women,
Nirmal Chhaya Complex,
Jail Road, New Delhi.
Contact- 011-28520114

⁴⁷⁸ Available at

http://delhi.gov.in/wps/wcm/connect/doi_t_wcd/wcd/Home/Women+Empowerment/Protective/List+of+Short+Stay+Institutions+in+Delhi+for+Women

Annexure XIII - Family Counselling Centers in Delhi

Decentralized Counselling Centres

S.No.	Name & address of institution	Complete address & location
1.	Mahila Pratiraksha Mandal, B-58, Lajpat Nagar, New Delhi-24 Phone No.9810071206, 29816102, 26837488	Tihar Jail
2.	Mahila Pratiraksha Mandal, B-58, Lajpat Nagar, New Delhi-24 Phone No.9810071206, 29816102, 26837488	Sector – E, B-1/403, Ragubir Nagar, New Delhi-25936057
3.	Love & Care D-178, Okhla Industrial Area, Phase-I, New Delhi. Phone No. 26814397, 26810096, 26812973	Room No. 75 & 76, Block A, Govind Puri, Transit Camp, New Delhi
4.	Y.W.C.A. of Delhi Ashoka Road, New Delhi. Ph. No. 23744796	4/496, Trilok Puri, Delhi
5.	Harijan Sewak Sangh Kingsway Camp, Delhi-110009 Phone No. 27113641, 27114514	Kingsway Camp
6.	Mahila Dakshata Samiti D-II/45,Kidwai Nagar(W),New Delhi- 110023 Phone No. 24102067	Kidwai Nagar
7.	Mahila Dakshata Samiti D-II/45,Kidwai Nagar(W),New Delhi- 110023 Phone No. 24102067	1863, Wazir Singh Street, Pahargang, Chuna Mandi, New Delhi-110055
8.	Guild of Service Shubham, C-25, Institutional Area, South of IIT, New Delhi. Phone No. 26854529, 51013416	Qutab Institutional Area
9.	Navjyoti Delhi Police Foundation, 3rd Floor, Sarai Rohilla Police Station	Jahangirpuri

	Complex, New Delhi Phone No. 27637746	
10.	Dr. A.V. Baliga Memorial Trust, Link House, Patriot House, B.S. Zafar Marg, New Delhi. Phone No. 23311119	L-Block, Basti Vikas Kendra Resettlement Colony, Mangolpuri, Delhi
11.	Women's Welfare & Self Employment Society, B-II/401, Paradise Apartment, 40-I.P. Ext., Patparganj, Mother Dairy Road, Delhi	Ist Floor, Basti vikas Kendra, Joshi Colony, Mandawali, Fazalpur
12.	Bharat Sewak Samaj 19 & 20, Northend Complex, R.R. Ashram Marg, New Delhi-110001. Phone No. 23364675	Bara Dari, Goshala Lane, Man..... New Delhi
13.	Pratidhi Shakarpur Police Station Complex, Ist Floor, Ramesh Park, Pushta Road, Delhi. Phone No. 22527259, 22460100	Shakar Pur Police Station Complex Email: Pratidhiorg@rediffmail.com
14.	All India Women's Conference, 6 Bhagwan Das Road, Bapnu Ghar, New Delhi. Phone No. 23389680, 23381165	Bapnu Ghar
15.	New Delhi Y.M.C.A. Jai Singh Road, New Delhi-110001 Phone No. 23361915	E-52, Aradhak Nagar, Shahdara
16.	Sanjivini Society for Mental Health, A- 6, Satsang Marg, Institutional Area, South of IIT, New Delhi	Under Defence colony, Fly Over
17.	Navjyoti Delhi Police Foundation A-304, Phase –II, Metro vihar, Halambi Kalan, New Delhi. Phone No. 25953095, 27700553	Holambi Kalan
18.	PRAYAS Institute of Juvenile, 59, Tuglakabad	Tuglakabad

Institutional Area, New Delhi. Phone No. 29955505, 26078103	
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Centralized Family Counselling Centres

S.No.	Name & Address of Institution	Complete address & Location	Contact Number
1.	Navjyoti Delhi Police foundation, Phone No.	Khasara no. 99, Village Mohammad pur, Karala Majri, New Delhi-110081.	25953056, 23690024
2.	Ashray	WZ- 2C, Chaukhandi Village, Tilak Nagar, New Delhi-110018	25918990
3.	Sampurna	Basement 35, Vinoba Kunj, Sector-9, Rohini, Delhi-110085	9868104665, 27556498
4.	Vikasini All India Association for Christian Higher Education,	Ecumenical House, 39, Institutional Area, DBlock, Janakpuri, New Delhi-110058	
5.	Prayatan	E- 103, Kalkaji, New Delhi-110019	
6.	Shyama Prasad Mukherjee College	Punjabi Bagh, New Delhi	25165598
7.	Satyawati College (M)	Ashok Vihar, Phase –I, New Delhi	23539017, 27219570
8.	Satyawati Co-Ed. College (E)	Ashok Vihar, Phase –I, New Delhi	9868163193, 27214402
9.	Kirori Mal College	Delhi University, Delhi	9811689969, 27667787

Annexure XIV - Non-governmental organizations working for emotional and relationship problems⁴⁷⁹

- a. Aasra, Mumbai
Phone: +91 22 2754 6669
Timings: All Days :24 Hours
Email: aasrahelpline@yahoo.com
Website: www.aasra.info
- b. Crest Care and Counselling Centre, Bangalore
Phone: +91 80 2545 3076
Timings: Mon - Sat :9:30AM - 5:30PM
Email: crestflp@gmail.com
- c. Helping Hands, Bangalore
Phone: +91 80 2353 5787
Timings: Mon - Sat :9:00AM - 5:30PM
Email: banjara@bgl.vsnl.net.in
Website: www.banjara.org
- d. iCALL- Initiating Concern for All, All India
Phone: +91 22 25521111
Timings: Mon - Fri :8.00am - 10.00pm , Saturdays :8.00am - 10.00pm
Email: icall@tiss.edu
- e. Lifeline Foundation, Kolkata
Phone: +91 33 2463 7401, +91 33 2463 7432
Timings: Mon - Sat :10:00AM - 6:00PM
Email: reach@lifelinekolkatta.org
Website: www.lifelinekolkatta.org
- f. Maithri, Cochin
Phone: +91 484 254 0530
Timings: All Days :10:00AM - 7:00PM
Email: maithrikochi@gmail.com
Website: www.maithrikochi.org
- g. Maitra, Mumbai
Phone: +91 22 2538 5447
Timings: All Days :9:00AM - 9:00PM
Email: iph@healthymind.org
Website: www.healthymind.org

⁴⁷⁹ Available at <http://www.tarshi.net/index.asp?pid=240&cat=1>

- h. Roshni, Secunderabad
Phone: +91 40 6620 2000
Timings: Mon - Sat :11:00AM - 9:00PM
Email: bi_roshni@yahoo.com
- i. Saath, Ahmedabad
Phone: +91 79 2630 5544
Timings: All Days :1:00PM - 7:00PM
Email: saath12@yahoo.com
Website: www.ourindia.com/saath.htm
- j. Sahai, Bangalore
Phone: +91 80 2549 7777
Timings: Mon - Sat :10:00AM - 8:00PM
Email: medicovision@gmail
Website: www.sahaihelpline.org
- k. Samaritans Bombay, Mumbai
Phone: +91 22 6464 3267 & +91 22 6565 3267/3247
Timings: All Days :3:00AM – 9:00PM
Email: smaritns@vsnl.com
Website: www.karmayog.com/ngos/samaritans.htm
- l. Sanjivini Society for Mental Health, Delhi
Phone: +91 11 2686 4488, +91 11 2686 2222
Timings: Mon - Fri :10:00AM - 7:30PM
Email: sanjivinisociety@rediffmail.com
Website: www.sanjivinisociety.org
- m. Sappho, Kolkata
Phone: +91 983 151 8320
Timings: Tues - Sun :12:00PM - 8:00PM
Email: sappho1999@rediffmail.com
Website: www.sapphokolkata.org
- n. Serve, Kolkata
Phone: +91 983 078 5060
Timings: Mon - Fri :7:00AM - 7:00PM
Email: serve@vsnl.net
Website: www.serve4students.net.in

- o. Sneha, Chennai
Phone: +91 44 2464 0050
Timings: All Days :24 Hours
Email: help@snehaindia.org
Website: www.snehaindia.org

- p. Snehi, Delhi
Phone: +91 11 6541 8181
Timings: All Days :2:00PM - 6:00PM
Email: info@snehi.org
Website: www.snehi.org

- q. Sumaitri, Delhi
Phone: +91 11 2338 9090
Timings: Mon - Fri :2:00PM - 10:00PM , Sat - Sun :10:00AM - 10:00PM
Email: sumaitri@sumaitri.org
Website: www.sumaitri.org

- r. The Banyan, Chennai
Phone: +91 44 2345 2365
Timings: All Days :24 Hours
Email: the_banyan@vsnl.com
Website: www.thebanyan.org

- s. Vishwaas Society for Mental Health, Bangalore
Phone: +91 80 2663 2126
Timings: Mon & Wed :5:30PM - 7:30PM , Fri :10:30AM - 12:30PM
Email: vishwas91@vsnl.net

Annexure XV - Special cybercrime cells in India

Name of the Unit	Designation of the officer in-charge & Address	Contact Numbers & E-mail
Cyber Crime Investigation Cell	Superintendent of Police, Cyber Crime Investigation Cell, Central Bureau of Investigation, 5th Floor, Block No.3, Lodhi Road, New Delhi-110003	Ph: 09864052842 Speou9del@cbi.gov.in
Arunachal Pradesh		
Police HQ		arpolice@rediffmail.com
CID HQ	Additional DGP,CID Ulubari, Guwahati-781007	Ph: 0361-2521618 Ssp_cid@assampolice.com
Andhra Pradesh		
Cyber Crime Police Station, Hyderabad City Police	ACP, Cyber Crime Police Station, Beside Control Room, OPP Kalanjali, Beside L.B.Stadium, Hyderabad	Cybercell_hyd@hyd.appolice.gov.in
Cyber Crime Police Station, Cyberabad City Police	Police Commissioner's Office Old Mumbai Road, Jayabheri Pine Valley,Gachibowli Hyderabad, Andhra Pradesh-500032	Ph: 040-27854031 Sho_cybercrime@cyb.appolice.gov.in
Cyber Crime Police Station, CID, Hyderabad Cyber Crime Investigation Unit(CCIU)	1/C Cyber Cell, 3rd Floor, Crimes Investigation Department, A C, Guards,Hyderabad Dy.S.P, Kotwali police station, Patna	cybercrimesps@cid.appolice.gov.in Cciu-bih@nic.in

Assam		
	CID HQ,Dy.SP. Assam Police	Ph: +91-361-252-618, +91-9435045242 E-mail: ssp_cod@assampolice.com
Gujarat		
State CID, Crime & Rly, Gujarat State	DIG, CID Crime, 4th Floor, Police Bhavan, Sector-18, Gandhinagar	Ph: 079-23250798, 079-23254931/32 cc-cid@gujarat.gov.in Office of the DIG CID Crime
Deputy Commissioner of Police, Crime	Gaikwad Haveli, Jamalpur, Ahmedabad	Ph: 079-25330170 Dcp-crime-ahd@gujarat.gov.in
Haryana		
Cyber Crime and Technical Investigation Cell, Gurgaon	Old S.P. Office complex, Civil Lines, Gurgaon	Joint Commissioner of Police Jtcp.ggn@hry.nic.in DCP Crime dcprimegrg@hry.nic.in
Himachal Pradesh		
CID HeadQuarters	Dy, SPCID Head Quarter, Kusumpati, Shimla-9, Himachal Pradesh	Soodbrijesh9@gmail.com
Jammu & Kashmir		
SSP, Crime	CPO Complex, Panjtirithi, Jammu-180004	Ph: 0191-2578901 Sspcrmjmu.jk@nic.in
Jharkhand		
CID, Organized Crime	IG, CID, Rajarani Building, Doranda Ranchi, 834002	agupta@jharkhandpolice.gov.in
Karnataka		
Cyber Crime Police Station,	S.P. Cyber Crime police Station, C.I.D. Headquarters, Carlton House, #1, Palace Road, Bangalore-560001	cyberps@keralapolice.gov.in

Kerala		
Hi-Tech Crime Enquiry Cell	Police Head Quarters, Trivandrum	Ph: 0471-2721547 hotechcell@keralapolice.gov.in
Cyber Cell	Sub-Inspector of Police, Office of the Inspector General of Police Ernakulam Range, Ernakulam	sicybercell@kochicitypolice.org cybercellekmcity@keralapolice.gov.in
Manipur		
SP, CID Crimes branch	SP, CID, Crimes branch, Jail Road, 1st bat Manipur rifle campus, Impal-795001	cid-cb@man.nic.in
Madhya Pradesh		
State Cyber Police	IGP, Cyber Cell Police Radio Headquarters Campus, Bhadadhadaa Road, Bhopal MP	Ph: 0755-2770248 mpcyberpolice@gmail.com www.mpcyberpolice.nic.in
Maharashtra		
Cyber Crime Investigation Cell, Pune City Police	Dy. Commissioner of Police, EOW & Cyber, Office of the commissioner of Police, 2, Sadhu Vawani Road, Camp, Pune-411001	Ph: 020-26123346 Crimecyber.pune@nic.in
Cyber crime Investigation Cell, Pune City Police	Assistant Commissioner of Police, CCPS, BKC Police Station Complex, Mumbai	Ph: 022-26504008 Cybercell.mumbai@mahapolice.gov.in
Cyber Crime Cell, Thane City Police	Cybercrime Investigation Cell, 3rd Floor, OPP Thane Police School, Near Kharkar Lane, Thane(W)-400601	Ph: 022-25429804/25424444
Cyber Crime Cell, Nagpur City	I/C Officer – DCP(EOW & Cyber) PSI,Cyber	Ph: 0712-2566766

	Crime Cell, Nagpur City, Crime Branch, New Administrative Building, 4th Floor, Civil Lines, Nagrpur-440001	
Meghalaya		
SP, SCRB	SP, SCRB, Police Head Quarters, Secretariat Hill, Shillong-793001, Meghalaya	Meghcid2002@yahoo.com scrb-meg@nic.in demanjyrwa@yahoo.com
Orissa		
CID, Crime Branch	SP Crime Branch, CID Crimes Branch Office, Buxybazaar, Cuttack, Orissa-753001	Sp1cidcb.orpol@nic.in
Rajasthan		
Special Operations Group	Jhalana Mahal, Jagatpura Road, Malviya Nagar, Jaipur	splcrimejpr@gmail.com
Tamil Nadu		
Cyber Crime Cell, Chennai City	Commissioner Officer Campus Egmore, Chennai – 600008	cyberac@rediffmail.com
Cyber Crime Cell, CID, Chennai	No.3, SIDCO Electronic Complex, 1 Floor, Guindy, Chennai-32	cbc cyber@nic.in
Tripura		
SP, CID	SP, CID, Arunthati nagar, Agartala-799003	Ph: 0381-2376963 SpCID-tri@nic.in
Uttar Pradesh		

Cyber Complaints Redressal Cell	Agra Range 7, Kutchery Road, Baluganj, Agra-232001	Ph: 9410837559 digraga@up.nic.in info@cybercellagra.com
UttaraKhand		
Special Task force	DIG, STF, PHQ, 12 Subhash road, Dehradun, Uttrakhand 248001	dgc-police-ua@nic.in
West Bengal		
CID, Cyber Crime, West Bengal	CID Cyber Crime Cell, Bhabani Bhaban	Ph:033-24506163 occyber@cidwestbengal.gov.in
Kolkata Police Cyber Crime Police Station	ACP, Cyber Crime Police Station, Lal Bazzar, Kolkata	Ph: 033-22505120, 033-22141420 cyberps@kolkatapolice.gov.in
North 24 Parganas Dist. Cyber Crime Cell	S.I Cyber Crime Cell, 1st Floor of Bidhannagar North Police Station, Beside Tank No:6, Saltlake, Kolkata-64	
New Delhi		
Assistant Commissioner of Police, Cyber Crime	Economic Offenses Wing, Police Training School Complex Malviya Nagar, New Delhi	acp-cybercell-dl@nic.in
Chandigarh		
Cyber Crime Cell, Chandigarh	Inspector of Police, Cyber Crime Cell, Crime Branch Office, Sector-11, Chandigarh	cybercrime-chd@nic.in

*<http://csrindia.org>

Annexure XVI - Legal Services in India

1. National Legal Services Authority
12/11, Jam Nagar House, Shahjahan Road,
New Delhi-110011
Ph. 23386176,23382778; E-mail: nalsa-dla@nic.in
Delhi Legal Services Authority's 24 Hours Free Legal aid Help Line – 12525
2. Andaman and Nicobar Islands
Member Secretary
State Legal Services Authority
Circuit Bench of Calcutta High Court Complex
Andaman & Nicobar Islands, Port Blair – 744101
Mobile: +91 9434267880
E-mail: slsa@and[at]nic[dot]in
Website: <http://slsa.and.nic.in>
3. Chandigarh
State Legal Services Authority
Additional Deluxe Building,
Ground Floor,
Sector 9-D, UT, Chandigarh
Office: +91-172-2742999 Fax: +91-172-2742888
Toll Free (Legal Assistance Establishment): 1516
Mobile No.(24x7 Free Legal Advice): +91 7087-112-384
Email: slsa_utchd@yahoo.com
4. Haryana State Legal Services Authority,
Institutional Plot No.09,Sector-14 Panchkula (Near Kisan Bhawan)
Helpline:-18001802057
Email : hslsa.haryana@gmail.com, hslsa@hry.nic.in
5. Andhra Pradesh
Andhra Pradesh State Legal Services Authority
Nyaya Seva Sadan,1st Floor, City Civil Court Compound Purani Haveli,
HYDERABAD – 500002
O: 040-23446702,
TF: 23446700 & 23446701, M 0940621438 09440621437
E-mail: apslsauthority@rediffmail.com,
apslsauthority@yahoo.com

6. Arunachal Pradesh
Arunachal Pradesh State Legal Services Authority,
Chief Minister's old Office Building,
Niti Vihar, Itanagar,
P.O. Itanagar,
District Papum Pare,
Arunachal Pradesh - 791111.
O: 0360-2290999, M: 09402478111
e-mail: apslsa2013@rediffmail.com

7. Assam
Assam State Legal Services Authority,
1st Floor, District Judges New Court Building,
Gauhati High Court, GUWAHATI – 781001.
O: 0361-2601843 TF: 2601843 M: 09435245907
e-mail: aslsa@gmail.com
assamslsa@gmail.com

8. Bihar
Bihar State Legal Services Authority,
Opposite Patna Museum, Buddha Marg,
PATNA – 800001 O: 0612-2230943 F: 2201390
M: 8986109910/ 08544427241
E-mail: bslsa_87@yahoo.in

9. Chattisgarh
Chattisgarh State Legal Services Authority, Vidhik Seva Marg, Bilaspur,
Chhattisgarh – 495001.
O: 07752-417625, 410210 F: 410530 M: 9424254782
E-mail – cgslsa.cg@nic.in
rajnishshrivastav@gmail.com

10. Goa
Goa State Legal Services Authority
New High Court Building,
Lyceum Complex, Altinho, Panaji
Goa - 403001.
D-2422591 (direct), O: 0832-2421169, 2431910, 2224126
TF: 2224126, F: 2420531 M: 9850471189
e-mail: reg-high.goa@nic.in
www.slsagoa.nic.in

11. Gujarat
Gujarat State Legal Services Authority,
1st Floor, Advocate Facility Building, "A" Wing,
Gujarat High Court Complex, Sola, AHMEDABAD – 380060.
Tele/Fax : - (O) 079-27664964,
Toll Free No.: 1800-233-7966 M: 9824022266
E-mail : msguj.lsa@nic.in
12. Himachal Pradesh
H.P. State Legal Services Authority, Block No.22, SDA Complex, Kusumpti,
SHIMLA - 171009.
O: 0177-2623862 TF: 2626962 M: 09418077112
Email: mslegal-hp@nic.in
13. Jammu and Kashmir
J&K State Legal Services Authority,
JDA Complex, Janipura, JAMMU - 180007
2. Summer Address: (April to October)
Old Secretariat, Srinagar.
(Cell: 09419132442, (F) 0191-2530095) jkslsa1234@gmail.com
M: 09419123630, 0191- 2546753
0191-2564764 (Office Jammu)
0191-2539962 , 0194-2452267-Fax
0194-2450644 (Office Srinagar) 0194-2480408
Mr. Mujmeel (Nazir)- 09419487349
14. Jharkhand State Legal Services Authority,
NYAYA SADAN
Near AG Office,
Doranda, Ranchi - 834002.
(O) 0651-2481-520, 2482-392
(TF) 2482-397, (M):08986601912 MS
(M):09431387340 JS
jhalsaranchi@gmail.com &
jhalsa_ranchi@yahoo.co.in
15. Karnataka State Legal Services Authority
Nyaya Degula, 1st Floor, H.Siddaiah Road,
Bangalore – 560027
O: 080-22111875, O: 22111714
F: 22112935, M: 09448068444, DS: 22111716
AS: 22111729
karslsa@gmail.com

15. Kerela
Kerala State Legal Services Authority,
Niyama Sahaya Bhavan, High Court Compound,
Ernakulam, KOCHI - 682031.
(O) 0484-2396717 Per: 2395717, (M): 09447883298
E-mail: kelsakerala@gmail.com
Website: www.kelsa.nic.in
17. Madhya Pradesh
M.P. State Legal Services Authority,
574 South Civil Lines, Pachpedi,
JABALPUR - 482001.
(O) 0761-2627370, 52, 2624131 (M):09131300620 (F) 2678537
E-mail: mplsajab@nic.in
18. Maharashtra
Maharashtra State Legal Services Authority,
105, High Court, PWD Building, Fort,
MUMBAI - 400032.
(O) 022-22691395, (O) 22691358/22665866, (F) 22674295
M: 9869088444/8291844840
e-mail: mslsa-bhc@nic.in ,
legalservices@maharashtra.gov.in
19. Manipur
Manipur State Legal Services Authority,
High Court of Manipur Complex, Mantripukhri - 795002, Imphal.
(O) 0385-2410786, (TF) 2413552, (F) 2411461, 23926742
(M):09436239700,09436025548
(High Court F) 2413552
maslsa.imphal@gmail.com
20. Meghalaya
Meghalaya State Legal Services Authority,
R.No.120, MATI Building, Additional Secretariat,
SHILLONG - 793001.
(O) 0364-2501051, 2336619, (F) 2336618, 2500064
(M):09436103497
Registrar High Court (Shillong)
(O) 2226675, (F) 2500064
e-mail: megshillong@gmail.com

21. Mizoram
Mizoram State Legal Services Authority,
Junior Judges Quarters Building,
New Capital Complex, Khatla, Aizwal,
Mizoram
(O) 0381-2336621, (F) 2336619, (M) 09402101712
e-mail: mizoramslsa@gmail.com
22. Nagaland
Nagaland State Legal Services Authority,
Old Secretariat Complex,
KOHIMA - 797001.
(O) 0370-2290153, (F) 2290153, (M) 08132918484
nslsa.nagaland@yahoo.in
23. Odisha
Orissa State Legal Services Authority,
S.O. Quarter No.20, Cantonment Road,
Cuttack - 753001.
(O) 0671-2307678, 2304389, 2307071, (R) 2304233
(M) 9437027678, (F) 2305702
E-mail oslsa@nic.in
24. Punjab
Punjab State Legal Services Authority,
Site No. 126, Opposite GMADA Community Centre,
Sector-69, S.A.S. Nagar, Mohali
O: 0172-2216690, 2216750, (M) 08558809600
Tele Fax 4652568
E-mail: ms@pulsas.gov.in
25. Rajasthan
Rajasthan State Legal Services Authority,
Rajasthan High Court Building,
JAIPUR - 302005.
(O) 0141-2227481(D) 2227886, (F) 2227602,
(M): 08003395819/9414045011
e-mail: rslsajp@gmail.com

26. Sikkim
Sikkim State Legal Services Authority,
Development Area, Gangtok, East Sikkim - 737101.
(TF) 03592-207753, (M) 9434318380/9933445423
e-mail: sikkim_slsa@live.com
sikkimslsa.nic.in
27. Telangana
Telangana State Legal Services Authority,
IInd Floor, Nyaya Seva Sadan, City Civil Court Compound, Purani
Haveli, HYDERABAD – 500002 .
TF: 040-23446725, M 9440621436
Email: telenganaslsa@gmail.com
28. Tamil Nadu
Tamil Nadu State Legal Services Authority,
North Fort Road, High Court Campus
CHENNAI - 600104.
(O) 044-25342834, (O) 25235767, (F) 25342268, (M) 09444070601
E-mail: tnslsa@dataone.in,
tnslsa@gmail.com
29. Tripura
Tripura State Legal Services Authority,
East Bank of Malarmath Dighi,
Agartala, Tripura (W) - 799001.
(O) 0381-2322481, (F) 2328998, (HL) 2310444, (M) 09436521551
E-mail: salsatripura@gmail.com
30. Uttar Pradesh
U.P. State Legal Services Authority,
3rd Floor Annexe, Jawahar Bhavan,
LUCKNOW - 226001.
(O) 0522-2286395, 2287972, (F) 2286260, (M) 9415349102
OSD: 09415396326, DS: 09415342396, 09415396749
E-mail: upslsa@up.nic.in
Website: www.upslsa.up.nic.in

31. Uttarakhand
Uttarakhand State Legal Services Authority,
Glenthorn Building, High Court Complex,
Nainital, Uttarakhand - 263002.
(O) 05942-236762, (TF) 236552, (M) 09412057720, 09456596233
slsa-uk@nic.in
e-mail: highcourt_ua@nic.in
32. West Bengal
W.B. State Legal Services Authority,
City Civil & Sessions Court Building (1st Floor),
2 & 3, Kiron Sankar Roy Road,
KOLKATA - 700001.
(D) 033-22484234, (O) 22483892, (F) 22484235
(M) 8584859849, 9073307706
E-mail: wbstatelegal@gmail.com
33. Dadra and Nagar Haveli
UT Dadra & Nagar Haveli Legal Services Authority,
District & Sessions Court,
Tokarkhada, Silvassa,
Dadra and Nagar Haveli (U.T.)
Pin – 396230.
(O) 0260-2230887, (F): 2641334, (M): 09422109429
E-mail: reg.slsa-dnh@gov.in
34. Daman and Diu
Daman & Diu Legal Services Authority,
Moti Daman - 396220.
M: 09403104337, (O) 0260-2230887, 2230221
e-mail: damanourt@gmail.com
(o) 02875252136 (Diu)
35. Delhi
Delhi State Legal Services Authority,
Pre-fab Building, Patiala House Courts,
NEW DELHI - 110001.
(O) 011-23384781, (O) 23383014 (PHC), (F) 23387267 (PHC), (M) 9910384720
e-mail: dlsathebest@gmail.com

36. Lakshwadeep
Lakshadweep State Legal Services Authority,
District & Sessions Judge, Lakshadweep,
KAVARATTI ISLANDS - 682555.
(O) 04896-262323, (O) 263138 (R) 262233, (F) 262184, 262307, (M) 09447189138
e-mail: veebhaskr@gmail.com
lslsa-lk@nic.in
37. Puducherry
U.T. of Puducherry Legal Services Authority,
No.3, Lal Bahadur Shastri Street,
Puducherry - 605001.
(O) 0413-2338831, (O) 2338831 M: 09952551164
E-mail: msutplsa@gmail.com

Annexure XVII - National and State Commissioners for Women

NATIONAL COMMISSION FOR WOMEN

Plot-21, Jasola Institutional Area,

New Delhi – 110025

Contact No. -

011 - 26942369, 26944740, 26944754, 26944805, 26944809

STATE COMMISSIONS FOR WOMEN

Andhra Pradesh

S. No.	Name & Designation	Office	Email
1.	Smt. Nannapaneni Rajakumari, Chairperson	D.No: 4-19-129/1, Vikas Nagar 2nd line, Guntur. Pin : 533006 Phone: 0863-2329090; 9963949090	apwomenscommission@gmail.com
2.	Smt. Nimmanapalli Parveen Banu, Member	-do-	parveenbanu.tdp@gmail.com
3.	Smt. Dr. Sirigineedi Rajya lakshmi, Member	-do-	rajiramesh416@gmail.com
4.	Smt. Koyyana Vani (Alias) Srivani, Member	-do-	tdevi1974@gmail.com
6.	Smt. Mathyarasa Manikumari, Member	-do-	tdppaderu148@gmail.com

Arunachal Pradesh

S. No.	Name & Designation	Office	Email
1.	Ms. Nipo Nabam, Chairperson	Arunachal Pradesh State Commission for Women, 'C' Sector, Ita Nagar, 791111 Phone: 0360-2214567/ 0360-2290544(Fax)	chairperson@arunachalwomencommission.in; apscwitanagar@gmail.com, womenofarunachal@rediffmail.com

2.	Ms. Nabam Yabang, (Vice-Chairperson)	0360-2214634, 0360-2290544; 9436897003	-do-
3.	Ms. Duma Yekar, Member	0360-2214443, 0360-2290544; 9436897004	-do-
4.	Ms Hage Yasung, Member	0360-2214443, 0360-2290544; 9436897400	-do-
5.	Ms Oter Ering Tayeng, Member	0360-2214443, 0360-2290544; 9436249138	-do-
6.	Ms. Yame Higio, APCS, Member Secretary	0360-2215819, 0360-2290544; 9436897002	-do-

Assam

S. No.	Name & Designation	Office	Email
1.	Smt.Chikimiki Talukdar, (Chairperson)	Assam State Commission for Women, Beltola, Near Sankardev Netralaya Guwahati-781028 Phone: 0361-2220013 (O) 9864047836	ascwguwahatia@gmail.com
2.	Smt. Hemoprava Borthakur, (Vice-Chairperson)	-do- Mobile : 94350-32644, 84862-02158	-
3.	Ms. Maya Rani Sarkar, Member	-do-	-
4.	Ms. Jugabala Buragohain, Member	-do-	-
5.	Ms. Dhira Talukdar, Member	-do-	-
6.	Ms. Seema Das, Member	-do-	-
7.	Ms. Kabita Basumatary, Member	-do-	-
8.	Ms. Kunja Rani Taye, Member	-do-	-

9.	Ms. Niyati Dey, Member	-do-	-
10.	Smt. Cauvery Barkakati Sharma, A.C.S., (Member Secretary)	TeleFax: 0361-2519875	-

Bihar – Email - biharswc@gmail.com

S. No.	Name & Designation	Office	Email
1.	Ms. Dilmani Mishra, (Chairperson)	1 South, Beily Road, Near Ptana High Court, Patna - 01, Bihar Phone: Office (0612- 2507800), Fax (0612- 2226368), Direct No. : 0612-2506480	-
2.	Smt Savita Devi, Member	-d0- Mobile: +91-9430226371	imsavitanaatraj@gmail.com
3.	Smt Chimo Devi Uraon, Member	-d0- Mobile: +91-9430226372	-NA-
4.	Smt Shahnaz Bano, Member	-d0- Mobile: +91-9430226374, +91- 7739729180	banoshahnaz.b@gmail.com
5.	Smt Renu Sinha, Member	Mobile: +91-9430226396	renusinha.swc@gmail.com
6.	Smt Pratima Sinha, Member	Mobile: +91-9430226395	psinha.islampur@gmail.com
7.	Smt Chaudhary Mayawati, Member	Mobile: +91-9430226392	chaudhrymayawati@gmail.com
8.	Smt Reena Kumari, Member	Mobile: +91-9430226393	-NA-
9.	Smt Suranjeeta Sinha, Deputy Secretary	Mobile: +91-9430226302	-NA-

Chhattisgarh

S. No.	Name & Designation	Office	Email
1.	Ms. Harshita Pandey, (Chairperson)	Gaytri Bhawan, 13, Jalvihar Colony, Raipur - 492001 Phone: 0771-4241400 - 416 Fax: 0771-4013189, 4241416; 9826649159	cgmahilaayog@gmail.com
2.	Ms. Khileshwari Kiran, Member	98931-96699, 9009994196	-
4.	Ms. Pdma Chanrakar, Member	9826615415	-
5.	Ms Raimuni Bhagat, Member	9425572628	-

Goa

S. No.	Name & Designation	Office	Email
1.	Ms. Shubhalaxmi Nayak, (Chairperson)	Junta House No. 3rd Lift, 4th Floor, 18th June Road, Panaji, Goa - 403001 Phone: 0832-2421080 Fax: 0832-2232630	goawomenscommission@gmail.com

Gujarat

S. No.	Name & Designation	Office	Residence	Email
1.	Ms. Leela Ben Ankoliya (Chairperson)	Gujarat State Commission For Women, 2nd Floor, Block No. 6, Dr. Jivraj Mehta Bhavan Gandhi Nagar Phone: 079-23251613 Fax:079-23251605	Mobile: +91- 9978405656	ps2presi-gscfw@gujarat.gov.in
2.	Vinaben Patel, Member Secretary	-	-	-

Haryana (Updated on 04/08/2017)

S. No.	Name & Designation	Office	Email
1.	Smt. Partibha Suman, (Chairperson)	Bays No. 39-40, CADA Bhawan, Sector-4, Panchkula, Haryana Phone: 0172 - 2584039, 0172-2583639; Mobile: 09254050111	ayogmahila@gmail.com
2.	Smt. Preeti Bhardwaj, Vice Chairperson	Phone : 0172-2583639; Mobile: 9818670116	-
3.	Ms. Monica Malik, HCS Member Secretary,(Additional charge)	Phone: 0172-2701337 ; Mobile : 9464543714	-
4.	Ms. Indu Yadav, Member	Mobile : 9416939985	-
5.	Ms. Namrata Gaur, Member	Mobile : 9729215640	-
6.	Ms. Sonia Aggarwal, Member	Mobile : 7206440660	-
7.	Ms. Suman Bedi, Member	Mobile : 9996250859	-
8.	Ms. Anita Yadav, IAS Director, Women and Child Development Department, Haryana (Ex- Officio Member)	Phone : 0172-2560349	-
9.	Sh. B.S. Sandhu, IPS Director General of Police, Haryana (Ex- Officio Member)	Phone : 0172-2583281, 2587529	-

Himachal Pradesh (updated on 20/09/2018)

S. No.	Name & Designation	Office	Email
1.	Ms. Daisy Thakur (Chairperson)	H.P. State commission for Women, Himrus Bhawan, Himland, Shimla - 171001 Phone: 0177-2783607 TeleFax: 0177-2622929; Mobile:- +91-9816077100	comshimlahp_1972@hotmail.com
2.	Smt. Manjari Negi, Non Official Member	-do- Mobile: +91-9805754225	-
3.	Smt. Sushma Bhatt Non Official Member	-do- Mobile: +91-8894467552	-
4.	Smt. Indu Bala, Non Official Member	-do- Mobile: +91-9816841460	-

Jammu and Kashmir

S. No.	Name & Designation	Office	Email
1.	Vacant (Chairperson)	a) Wooden Building, Old Assembly Complex, Shrinagar J&K - 190001 (May-Oct) b) Pragati Bhawan, JDA Complex, Ist Floor, Rail Head, Jammu Tawi, J&K - 180012 (Nov-April); Mobile: 9419021682	jkwomenscommission@gmail.com

Jharkhand

S. No.	Name & Designation	Office	Email
1.	Mrs. Kalyani Sharan, (Chairperson)	Engineers Hostel No - 2, First Floor, Dhurwa, Ranchi - 834004 0651-2401849, 0651-2401865 0651-2401912(Fax); Mobile : 9431345563	scwjharkhand@gmail.com
2.	Smt. Renu Devi, Member	Office Number : 6201265933, 0651-2401865	-

Karnataka

S. No.	Name & Designation	Office	Email
1.	Kumari Nagalakshmi Bai, M.A.(Eco), L.L.B Chairperson	Mobile: 9663444006	kscwbang123@gmail.com
2.	Shri K. Parvathi Thimmiah, Member Secretary	080-22100435/22862368	kscwbang@yahoo.co.in

Kerala

S. No.	Name & Designation	Office	Email
1.	Ms. M.C. Josephine, (Chairperson)	Kerala Women's Commission, T.C. No. 2/38-42, Near Lourdes Church, PMG, Pattom P.O. Thiruvananthapuram - 4 Phone: 0471-2307590, 2307589, 2309878 0471-2300509 (FAX)	chairpersonkwc@gmail.com,

Madhya Pradesh

S. No.	Name & Designation	Office	Email
1.	Smt. Lata Wankhede, Chairperson	35, Rajiv Gandhi Bhavan, Khand-2, Ist floor, Shyamla Hills, Bhopal - 462002 Phone: 0755-2661802 Fax No: 0755-2661806; Mobile: +91-9424480007	scw-mp@nic.in, upmaraiswcmp@nic.in
2.	Smt. Ganga Uike Member	Phone: 0755-2666921 (TeleFax); Mobile: +91-9424968413	-NA-
3.	Smt. Usha Singh Solanki, Member Secretary	Phone: 0755-2661813; Mobile: +91-9425184993	-NA-

Maharashtra

S. No.	Name & Designation	Office	Email
1.	Smt. Vijaya Rahatkar, Chairperson	Gruha Nirman Bhawan Mhada Bldg., Kalanagar, Bandra (E) Mumbai - 400 051 Phone: 022-26590739 Fax: 022-26591541	mscwmahilaayog@gmail.com vijayarahatkar@gmail.com
2.	Smt. Neeta Thakre, Member	Mobile: +91-9823313119	neetathakre70@gmail.com
3.	Smt. Shobha Benjarge, Member	Mobile: +91-8007218741	sdenjarge@gmail.com
4.	Smt. Gayatai Karad, Member	Mobile: +91-9623443722	ganeshkarhad2222@gmail.com
5.	Smt. Vinda Kirtikar, Member	Mobile: +91-9223322550	vindakirtikar@rediffmail.com

Manipur

S. No.	Name & Designation	Office	Email
1.	Dr. K. Sobita Devi, (Chairperson)	DC Office Complex, North Block, Post Office LAMPHELPAT, Imphal, Manipur-795001 Phone:0385-2411880; +91- 9436022691	mscwimphal2k17@gmail.com
2.	Ms. Hodam Piteswori@Me mi, Member	Mobile: +91-9856189186	hodammem@gmail.com
3.	Ms. June Rose Vaiphei, Member	Mobile: +91-9862067015	jrvaiphei@gmail.com

Meghalaya

S. No.	Name & Designation	Office	Email
1.	Ms. Theilin Phanbuh, Chairperson	Meghalaya State Commission for Women, Lower Lachumiere,	mscwshillong@gmail.com, theilinphanbuh@yahoo.in

		Shillong, Meghalaya Telefax: 0364-2501998; Mobile: +91-9863114975	
2.	Smti. Gamchi Timre R. Marak, Vice-Chairperson	Mobile : +91-9862927183	marakgamchi1@gmail.com
3.	Smti. Nakilin G Shylla, Member	Mobile: +91-9436337440	nakilin_giri@yahoo.co.in
4.	Smti. Rebina Subba, Member	Mobile : +91-9612168706 / 9863065255	rebi123@rediffmail.com

Mizoram

S. No.	Name & Designation	Office	Residence	Email
1.	Ms. Margaret Zohmingthangi, (Chairperson)	Peter Street, Upper Khatla Aizawl, Mizoram - 796001 Phone: 0389-2319614 0389-2334997	-	Womencommissionmizoram @rediffmail.com

Nagaland

S. No.	Name & Designation	Office	Email
1.	Dr. Temsula Ao, (Chairperson)	NBCC Complex, 1st Floor, Bayavu Hill, Kohima -797001 Phone: 0370-2242670 (O) 0370-2241224 (F)	nwcommission@hotmail.com
2.	Ms. Kakheli Jakhalu, Member	-do- Mobile: +91-8014448608	-NA-

Odisha (updated on 03/04/2018)

S. No.	Name & Designation	Office	Email
1.	Dr. Lopamudra Baxipatra (Chairperson)	Block No. 1 & 2, 3rd Floor, Toshali Bhawan, Satyanagar, Bhubaneswar,	lopamudra.baxipatra@gmail.com, oscw.od@nic.in

		Odisha - 751007 2573870(F); +91-9437033704	
2.	Smt. Kusum Rath, Member	Mobile: +91-8280278234	kusumrath@gmail.com
3.	Ms. Snehanjali Mohanty, Member	Mobile: +91-9838645354	snehanjali2008@gmail.com
4.	Smt. Sasmita Nanda, Member	Mobile: +91-9439125202	sasmitananda2008@gmail.com

Punjab

S. No.	Name & Designation	Office	Email
1.	Smt. Manisha Gulati, Chairperson	SCO No. -57, 58, 59 Sector-17-C (Top floor in front of Neelam Cinema) Chandigarh. Phone: 0172-2783607	punjabwomenscommission@gmail.com

Rajasthan (Helpline No. 0141-2744000) (Last updated on 19/02/2018)

S. No.	Name & Designation	Office	Email
1.	Smt. Suman Sharma, Chairperson	Lal Kothi, Tonk Road, Jaipur Phone: 0141-2779001,02,03,04 0141-2227889 Mobile: +91-9414042722	suman.sharma.bjp@gmail.com, raj.rajyamahilaaaayog@gmail.com
2.	Dr. Reeta Bhargav, Member	-do- +91-9660096822	reeta.bhargava63@gmail.com
3.	Dr. Aruna Meena, Member	-do- +91- 9413101255	-
4.	Sh. Ajay Sukla, Register-cum- osd	Phone 0141-2744491; +91- 9414334319	-

Sikkim

S. No.	Name & Designation	Office	Email
1.	Ms. Rehana Rai, (Chairperson)	Sikkim State Commission for women, Old secretariat Below Super Market Govt. of Sikkim, Gangtok - 737101 Phone: 03592-203051; Mobile: +91-8145884246	sscwsikkim@gmail.com
2.	Ms. Phurmit Lepcha (Member)	Mobile: +91-9434408377, 9609874075	-NA-
3.	Ms. Lhakit Lepcha (Member)	Mobile: +91-9474350323	-NA-
4.	Ms. Lakhi Doma Bhutia (Member)	Mobile: +91-9775180889	-NA-

Tamil Nadu (Last updated 19/02/2018)

S. No.	Name & Designation	Office	Email
1.	Dr. Kannegi Packianathan IAS, (Rtd), (Chairperson)	Tamil Nadu State Commission for Women Ground Floor, Agriculture Office Building, Chepauk, Chennai 600005 Phone : 28551155	chairscwtn@yahoo.co.in

Telangana

S. No.	Name & Designation	Office	Email
1.	Vacant	IInd floor, Buddha Bhavan, Secunderabad - 500 003 Phone: 040-27542017 040-2754015 Fax: 040-27542017; Mobile: 9908844454	Telanganastatewomenscommission@gmail.com

Tripura

S. No.	Name & Designation	Office	Email
1.	Ms. Barnali Goswami, (Chairperson)	H. G. Basak Road, Melarmath Agartala, Tripura West-799001 Phone: 0381-2323355 Fax : 0381-2322912	tcw_t@rediffmail.com chairscwtn@yahoo.in tripuracommissionforwomen@gmail.com
2.	Ms. Tulsi Debbarma, Member	Mobile: +91- 9402387506	-NA-
3.	Adv. Nandita Guha, Member	Mobile: +91- 9436464102	nanditaguha1970@gmail.com
4.	Ms. Manoara Begum, Member	Mobile: +91- 9856548685	-NA-

Uttar Pradesh

S. No.	Name & Designation	Office	Residence	Email
1.	Smt. Vimla Batham (Chairperson)	U.P. State Commission for Women, IIIrd Floor, Rajya Manav Adhikar Bhwan, T.C. - 34, V, Vibhuti Khand, Gomat i Nagar, Lucknow - 226010 Phone: 0522- 2728670, 0522- 2305870 (Fax)	9810492224	up.mahilaayog@yahoo.com
2.	Smt. Sushma Singh (Vice-Chairperson)	-do-	7015084114	-
3.	Smt Anju Chaudhary, (Vice-Chairperson)	-do-	9935311226	-
4.	Dr. Priyavanda Tomar, (Member)	-do-	9968177169, 9837062424	-

Uttarakhand (updated on 02/11/2015)

S. No.	Name & Designation	Office	Residence	Email
1.	Vacant (Chairperson)	Uttarakhan Rajya Mahila Aayog, Mahila Sashaktikaran evam Bal Vikas Bhawan, Near Nanda Ki	Mobile: +91- 9412551844	women.commission.uk@gmail.com

		Chowki, Vikas Nagar Road, Sudwoaula, Prem Nagar, Dehradun - 248007 Uttarakhand Phone: 0135-2775817 (Tele Fax)		
2.	Smt. Prabhavati Gaur, (Vice-Chairperson)	-do-	Mobile: +91-9412026871	-NA-
3.	Smt. Amita Lohani, (Vice-Chairperson)	-do-	Mobile: +91-9927772206	-NA-
4.	Smt. Anita Lingwal, (Member)	-do-	Mobile: +91-9557180633	-NA-

West Bengal

S. No.	Name & Designation	Office	Residence	Email
1.	Ms. Leena Gangopadhyay, (Chairperson)	West Bengal Commission for Women, "Jalasampad Bhavan", (Ground Floor & 10th Floor), Block-DF, Sector - I, Salt Lake City, Kolkata-700 091 Phone: 033-23595609, 23210154, 23215895 23345324 (Fax)	Mobile : 9830947247	wbcw.org@gmail.com, leenagangopadhyay@gmail.com
2.	Smt. Ratna Ghosh, MLA (Vice-Chairperson)	-do-	Mobile: +91-9732407451	nilayroy2020@gmail.com
3.	Smt. Archana Ghosh (Member)	-do-	Mobile: +91-9800251314	kayakalpasadan@gmail.com
4.	Smt. Arpita Sarkar Ghosh, (Member)	-do-	Mobile: +91-9836053004	arpitasarkarghosh87@gmail.com

National Capital Territory of Delhi

S. No.	Name & Designation	Office	Email
1.	Smt. Swati Maliwal, (Chairperson)	C- Block, IInd Floor, Vikas Bhawan, I.P. Estate, New Delhi- 110 002 Phone: 011-23379150, 23378044	chairperson_dcw@rediffmail.com

Puducherry

S. No.	Name & Designation	Office
1.	(Chairperson) – Vacant	No. 20, 100 Ft. Road, Natesan, Pondicherry- 605005 Phone: 0413-2205153 (Tele-Fax)
2.	S. Amudha, (Member)	
3.	Dr. Devipriya, (Member)	Mobile: 9442034437
4.	A.J. Jamila @ Nazeema Bee, (Member)	Mobile: 7708882083

Annexure XVIII - Women's Organizations in India

1	Joint Women's Programme	CSIRS, 14 Jungpura B, Muthura Road, New Delhi 110014	0124-4053370, 98100 17523	jwpindia@gmail.com
2	National Commission for Women	Plot No.21, FC33, Jasola Institutional Area, New Delhi- 110025	011 - 26942369, 26944740, 26944754, 26944805, 26944809	ms-ncw@nic.in Joint Secretary jsncw-wcd@nic.in
3	YWCA of Delhi	Ashoka Road, New Delhi 110001	011-23362779	as@ywca.org; pa@ywca.org
4	Saheli Women's Resource Centre	Above Shop Nos105-108 Defence Colony Flyover Market New Delhi 110024		saheliwomen@gmail.com; jodhpur.madhu@gmail.com
5	Jagori	C-54 Top Floor South Extension II New Delhi 110049 India	91-11-6257015	jagori@jagori.org
6	SEWA Delhi	7/5 South Patel Nagar New Delhi 110008INDIA	91-11-2584-1369, 2584-0937	mail@sewabharat.org; anita@sewabharat.org
7	Self Employed Women's Association SEWA Reception Centre	OppVictoria Garden, Bhadra, Ahmedabad - 380 001India.	91-79-25506444 / 25506477 / 25506441	mail@sewa.org
8	All India Democratic Women's Association (AIDWA)	2253-E, Shadi Khampur, New Ranjit Nagar, New Delhi -110008	011-025700476, 25109565	aidwacec@gmail.com, aidwa@redifmail.com
9	CREA	New Delhi7 Mathura Road, 2nd Floor, Jangpura B, New Delhi – 110014	91 11 2437 7707, 24378700, 24378701	sdas@creaworld.org; shrestha

10	Tarshi	A-91 Amritpuri, 1st Floom, OppISKCON Temple, East Kailash, New Delhi 110065, India	91-11-26324023/24/25	tarshi@vsnl.com
11	Sewa Mandir	Purana Fatehpura, Udaipur-313004, Rajasthan	2450960, 2452001, 2451041	smandir@vsnl.com , info@sevamandir.org
12	Sangini – Gender Resource Centre	G-3/385, Gulmohar ColonyBhopal-462 016, Madhya Pradesh	0755-4276158, -2420361	info@sangini.org.in
13	Majlis, Mumbai	Building No.4, Block A/2, Golden Valley, Kalina Kurla Road, Kalina, Mumbai – 400098	022 – 26662394/26661252 (O), 2834603/ 2820840	majlislaw@gmail.com
14	Lawyers Collective Women’s Rights Initiative	63/2, Masjid Road, 1st Floor Jangpura, New Delhi – 110014	011-46805555	aidslaw@lawyerscollective.o rg
15	Stree Mukti Sangathan Mumbai	31 – Shramik, Royal Crest, 1st Floor, Lokman ya Tilak Vasahat Road No.3Dadar (E), Mumbai – 400014	91-2224174381	smsmum@gmail.com, sms@streemuktisanghatana.o rg
16	Unnati	G-1,200, Azad Society, Raxa Apartment, B/hGandhi Smruti Society Ahmedabad- 380015, Gujarat	079-26746145, 26733296	unnatiad1@sancharnet.in, unnati@unnati.org
17	Sanhita – Gender Resource Centre	89 B, Raja Basanta Roy Road, Kolkata 700029, West Bengal	91-33-4662150, 22161471	sanhita@cal.vsnl.net.in
18	Swayam	9/2B Deodar Street, Kolkata 700019, West Bengal	91 33 2486 3367/3368/3357	swayam@swayam.info, swayam@cal.vsnl.net.in

19	Sama – Resource Group for Women and Health	B-45, Second Floor, Shivalik Main Road, Malviya Nagar, New Delhi – 110017		011-26692730, 011-65637632
20	Navjyoti India Foundation-	Khasra No.99 Village Majri Karala New Delhi – 110081 Delhi	admin@navjyoti.org.in	8800528880
21	Pragya Prashikshan and Kalyankari Sansthan	B – 336/2 3, Meet Nagar Delhi – 110094 Delhi	vishnukant79@rediffmail.com	093116 09547
22	Renee Foundation for Women Empowerment –	Add: S-428, Greater Kailash Part I Delhi – 110048	info@renee.foundation.org	011 2923003
23	Multiple Action Research Group (MARG)	205-206, 2nd Floor Shahpur Jat New Delhi – 110049	marg@ngo-marg.org; karuna@ngo-marg.org; anju@ngo-marg.org	91-11-26497483/6925
24	Azad Foundation	Chelmsford Road, Paharganj, Opposite New Delhi Railway Reservation Centre, New Delhi, Delhi 110055		011 2358 3788

Annexure XIX - National Commissioner and State Commissioners for Persons with Disabilities

National Commissioner for Persons with Disabilities – Currently the National Commissioner for Persons with Disabilities is Mr Kamlesh Kumar Pandey. His contact details are as follows

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Mr Kamlesh Kumar Pandey

Office of Chief Commissioner for Persons with Disabilities (Department of Empowerment of Persons with Disabilities)

Ministry of Social Justice & Empowerment, Government of India

Address: Sarojini House, 6, Bhagwan Dass Road,

New Delhi – 110 001.

Contact - 011-23386054, 23386154

E-mail: ccpd@nic.in; Website: www.ccdiseabilities.nic.in

List of State Commissioners

State	Name & Addresss	Phone Number	Mail Id
Andhra Pradesh (Independant charge)	Mr. Sayed Md. Yusuf Commissioner, Disabilities, Govt. of Andhra Pradesh 6th floor, Chandra Vihar M.J. Road, Nampally Hyderabad – 500001	040-24619048, 24734873 (o) (R) 3547785, 3545814, 3550058	dw_cheyutha@yahoo.com
	Ms. Vasuda Misra (Social Welfare)	(040) 23456852	
Arunachal Pradesh	Mr. T. Darang Secretary & Commissioner (Disabilities), Dept. of Social Welfare, Women & Child Development, Govt. of Arunachal Pradesh Naharlagun, Itanagar-791111	0360-2212391 (O)	-
Assam	Shri Prasanta Bora, A.C.S. Commissioner for Persons with Disabilities, Govt. of Assam Basistha, P.O.Basistha Guwahati – 781029, Assam	0361-2230683 (O)	-
Bihar	Ms. Sujata Chaturvedi Director & Commissioner Disabilities,	0612 – 2211718, 2239707, 2221251	-

	Social Welfare Department, Old Secretariat, Sinchai Bhawan, Govt. of Bihar Patna – 800001		
Delhi	Mr. Anindo Majumdar Commissioner, Disabilities & Secretary – cum – Director, Social Welfare Department, Govt. of N.C.T. of Delhi, Delhi Secretariat, I.P. Estate, 4th Level, 'C' wing, New Delhi-110002	011-23392075, 23392124 (O) 23319419	-
Goa	Shri Santosh Vaidya Secretary Social Welfare Commissioner, Disabilities Public Works Dept., Head office, Altinho, Panaji, Goa – 403001	0612 – 2211718, 2239707, 2221251	-
Gujarat (Independant charge)	Shri Bhaskar Yogendra Mehta Commissioner Disabilities, Dept. of Social Justice & Empowerment, Govt. of Gujarat Old Vidhan Sabha Building 1st floor, Near Town Hall Sector –17, Gandhinagar – 382017	079-23256746(O) 23254919 (R)	commi-pwd@gujarat.gov.in
Haryana (Independant charge)	Shri B. Karora Commissioner, Disabilities Social Justice & Empowerment Govt. of Haryana SCO No.68-70, Sector –17 A, Chandigarh	0172 – 2548347 23386131 0172 – 2704212	-
Himachal Pradesh	Mr. Bhim Sen Principal Secretary & Commissioner, Disabilities, Dept. of Social Justice & Empowerment, Govt. of Himachal Pradesh Old Vidhan Sabha Building 1st floor, Near Town Hall Shimla – 171002	0177 – 2621867	hp@nic.in
	Shri S.S. Guleria, Addl. Secretary	0177- 2622064	

Karnataka	Shri.V.S.Basavaraju State Commissioner for Disabilities Govt. of Karnataka No.55, 2nd Floor, KSDB Building, Risaldar Street, Sheshadripuram, Bangalore- 560020	080-23462625/59/41	scdkarnataka@gmail.com
Kerala (Independant Charge)	Dr. N. Ahamed Pill Commissioner and Ex-officio Secretary to Govt. of Kerala Dept. of Women & Child Development Room No.113, Secretariat Annexe Thiruvananthapuram – 12.	0471-2518893, 2324004(O) (R):2444777 9846045618	-
	P.K. Chandrika Devi Administrative Officer	0471-2518929	
Madhya Pradesh (Independant Charge)	Dr. V.S. Niranjn, IAS Commissioner, Disabilities & Director, Social Welfare Dept Govt. of Madhya Pradesh 1250, Tulsinagar, Bhopal – 462003 Madhya Pradesh	0755- 2556916, 2778180, 2767279(O), 2465530(R)	dpswbpl@mp.nic.in
Maharashtra (Independant Charge)	Mr. R.K. Gaikwad, IAS Commissioner, Disabilities Govt. of Maharashtra 3, Church Road, Pune – 411001	020-26122061, 26126471(O)	-
Manipur	Shri I.S. Laishram Secretary Social Welfare & Commissioner Disabilities Old Secretariat, Govt. of Manipur Imphal –795001	0385- 2223076 (O) 2415797 (R)	-
Meghalaya	Mr. A. Mawlong Commissioner, Disabilities Govt. of Meghalaya Social Welfare Department Temple Road, Lower Lachumiere ,Shillong, Meghalaya – 793001	0364 – 2500772	-

Mizoram	Shri Lalbiaktluanga Khiangte Secretary Social Welfare & Commissioner (Disabilities) Govt. of Mizoram Mizoram Civil Secretariat Block 'D', Aizwal – 796001	0389 – 2322253(O) 2345022(R)	-
Nagaland	Shri D.K. Bhalla Secretary & Commissioner Disabilities, Dept. of Social Welfare & Women & Child Development, Nagaland Civil, Secretariat Government of Nagaland, Kohima –797001	0370-2270289(O), 2243316(R)	-
	Mr. Nochit	2243312	
Orissa	Dr. Mona Sharma Secretary, Women & Child Development and Commissioner Disabilities, Government of Orissa, Bhubaneswar – 751001	0674-2536775 (O) 2536767(R)	-
Punjab	Mr. R.L. Kalsia Secretary, Social Welfare and Commissioner Disabilities, Government of Punjab, Room No.607, 6th floor, Mini Secretariat, Sector – 9, Punjab, Chandigarh	0172-2742307 (O) 2742243–Ext.510 (R) 5097500, 09872480384	-
Rajasthan	Smt. Kusal Singh Commissioner Disabilities, Ambedkar Bhawan, Behind Pant Krishi Bhawan, Bhagawan Dass Road, Jaipur	0141-2706462 (O)	-
	Shri C.S. Mutha, Additional Commissioner Disabilities, Social Welfare Department, Govt. of Rajasthan, Ambedkar Bhawan, B-10, Jhalan, Institutional Area, Ricem building,, Jaipur– 302015	0141 – 2707906, 2742171(R)	-

Sikkim	Shri Girmee Goparma, Secretary & Commissioner Social Welfare Department, Govt. of Sikkim, Gangtok	03592-205596(O)	-
Tamil Nadu (Independant Charge)	Shri Thuru V.K. Jeyakodi, I.A.S Commissioner, Disabilities 15/1 Model School Road Thousand Lights Chennai – 600006.	044- 28290740 (O) 24910303 (R)	scd@tn.nic.in
	Mr. Sridharan	9884044109	
	Mr. Manoharana	9840185762	
Tripura	Shri S.K. Panda Pr. Secretary & Commissioner, Disabilities Social Welfare, Govt. of Tripura, Agartala – 799001	0381-2325706(O) (R) 2325095	-
	Shri Chakraborty Director, Social Welfare	2326033	
	Shipard	2350613	
Uttar Pradesh	Mr. Rohit Nandan Secretary, Disabled Welfre & Commissioner, Disabilities Room No. 123, Bapu Bhawan Lucknow	0522-2237193(O)	AyuktViklangJan@rediffmail.com
	Dr. S.K. Avasthi, Dy Commissioner	0522- 2287050, 2322137	
West Bengal (Independant Charge)	Mr. Supriya Gupta Commissioner(Disabilities) & Jt. Secretary, Women & Child Development, Govt. of West Bengal O/o the Commissioner for Persons with Disabilities, 45, Ganesh Chandra Avenue, Kolkata – 700013	033-22374731(O)	-
	K.S. Adhikari, Asst. Commissioner	22374731	

Chandigarh	Mr. Krishna Mohan Secretary & Commissioner Disabilities Social Welfare Dept., Chandigarh Administration Chandigarh-160019	0172-2741101(O) 2741503	-
Dadra & Nagar Haveli	Shri Vijay Kumar Director Social Welfare & Commissioner (Disabilities) Social Welfare Dept., Administration of Dadra & Nagar Haveli Via-Vapi, Western Rly, Silvassa (P.O.)	0260-2396230(O)	-
Pondicherry	Mr. Selva Raju Secretary & Commissioner (Disabilities) Social Welfare Dept., Govt. of Pondicherry, Pondicherry	0413-2334143, 2334144(O), 2251875(R)	-
	Director (SW)	2338828, 2338525	
Andaman & Nicobar Islands	Shri P.K. Gupta Secretary, Social Welfare Department & Commissioner Disabilities, Andaman & Nicobar Admn., Secretariat, Port Blair –744101	03192-233364(O)	-
Lakshadweep	Shri G. Sudhakar Director & Commissioner Disabilities, Social Justice & Empowerment & Culture, Lakshadweep Administration, Kavarati	03192-233364(O)	-
Daman & Diu	Shri Philip Thanglienmang Commissioner Disabilities, Social Welfare Dept., Collectorate U.T. of Daman & Diu, Daman – 396220	0260-2230854	-

Uttaranchal	Smt. Snehlata Agarwal, IAS Additional Secretary, Social Welfare Dept. & Commissioner Disabilities, Govt. of Uttranchal Near Jogiwala Chowk Infront of Rajeshwari Nursery, Haridwar Road, Dehradun	0135-2679012	snehagarwal9@hotmail.com
Chattisgarh (Independent charge)	Mr. Praful Vishwakarma Commissioner Disabilities, Jila PUNCHAYAT Bhawan Durg – 49100, Chattisgarh	0788-2325470(O) 2212861(R)	Commissioner_disabilities- cg@yahoo.com
Jharkhand	Mrs. Pooja Singhal Poorwar Commissioner Disabilities & Director, Social Welfare Department , Govt. of Jharkhand Ranchi, Jharkhand	0651-2400749(O)	-
Jammu & Kashmir	Shri B.L. Nimesh Commissioner Disabilities & Principal Secretary, Social Welfare Dept. , Jammu & Kashmir, Civil Secretariat, Jammu	0191 – 2542759 (O) , (R) 2451166, 2579126	-

ANNEXURE XX - Disability Organizations in India

1	ADAPT- Rights Group	ADAPT - Chairperson's Secretariat & Head Office: Upper Colaba Road, Mumbai - 400 005ADAPT - Chairperson's Secretariat & Head Office: Upper Colaba Road, Mumbai - 400 005	+91-022-2644 3666, 2644 3688	contact@adaptssi.org
2	Action for Autism	Action For Autism The National Centre for Autism Pocket 7 & 8, Jasola Vihar	011-4054 0991	actionforautism@gmail.c om helpline.afa@gmail.com email.afa@gmail.com

		New Delhi 110 025 India		
3	Bhagwan Mahaveer Viklang Sahayata Samiti	BR Mehta Secretary Bhagwan Mahaveer Viklang Sahayata Samiti 13A, Gurunanak Path Malviya Nagar Jaipur 302017 Rajasthan, India	09829056286	bmvssj75@gmail.com rangolibrm@gmail.com
4	Blind People's Association	BLIND PEOPLE'S ASSOCIATION (INDIA) Jagdish Patel Chowk, Surdas Marg, Vastrapur,Ahmedabad - 380015. India Ahmedabad - 380001, Gujarat, India	(+91 -79) - 26303346,26305082.	blinabad1@bsnl.in
5	National Association of the Deaf (India)	#102, 19-A Vishal Complex, Village Patparganj, Opp. Una Enclave Apartments, Mayur Vihar - I, Delhi - 110091. India	9810234165 (SMS Only)	secretary@nadindia.org
6	National Centre for Promotion of Employment for Disabled	E - 150, Ground Floor East of Kailash New Delhi - 110065 India	91-11-26221276	secretariat@ncpedp.org / secretariat.ncpedp@gmail.com
7	Muscular Dystrophy Society	Ratnakar' 2nd Floor, Block 5 Narayan Dabholkar Road Malabar Hill Mumbai 400006	Dr. Anil Desai - Jaslok Hospital Ms. Bharati Chhabria Tel: 22090227	info@mdsociety.org
8	Indian Society For The Rehabilitation Of Handicapped	Urveshi bldg. Flat no 602 off sayani rd. prabhadevi Mumbai 400025	2430 6883	dramarao1@rediffmail.com
9	CESHIRE DISABILITY TRUST	National Livelihood Resource Center 34, 6th Main, HAL 2nd Stage, Old Airport Road, Kodihalli, Bangalore 560 008	080-25275332	info@cheshiredisability.org contact@cheshiredisability.org

10	Paraplegic Foundation	P. B. 6794 T-1 Old Barracks Lokmanya Tilak Municipal General Hospital Compound Sion Mumbai 400022	Ms. Sulabha Warde, President Dr. P. M Kedia, Vice President; 24076381, 256257576	paraplegicfoundation@yahoo.com
11	Samarthanam Trust for the Disabled	Rayalaseema Branch (Microsoft Project) DRDA TTDC Building, near , ENADU Office, RAPHADU, ANANTAPUR, A.P. 515722	Srinivas PVK 9490702460	srinivaspvk@samarthanam.org
12	Rehabilitation Council of India	B-22, Qutab Institutional Area, New Delhi - 110 016.	91-11-26532816, 26534287, 26532384,26532408, 26511618 (outreach division)	rehabstd@nde.vsnl.net.in , rehcouncil_delhi@bol.net.in
13	Delhi Foundation for Deaf Women	Delhi Foundation of Deaf Women First Floor, DDA Community Hall Gali Chandiwali, Pahar Ganj New Delhi - 110 055, INDIA	011 2358 3276; 011 6535 8200	info@dfdwnet
14	Sanjivini for Mental Health	A - 6, Satsang Vihar Marg Qutub Institutional Area South of IIT New Delhi- 110067	40769002, 41092787, 26864488	sanjivini1971@gmail.com;
15	Anjali - Mental Health Rights Organization	93/2, Kankulia road, Benubon,A302,Kolkata - 700029,WB	033 22903711	info@anjalimentalhealth.org
16	Blind People's Association, India	Jagdish Patel Chowk, Surdas Marg, Vastrapur,Ahmedabad - 380015. India Ahmedabad - 380001, Gujarat, India	(+91 -79) - 26303346,26305082.	blinabad1@bsnl.in ; bpaiceviad1@bsnl.in
17	Make Love Not Scars	342, Old M B Road, Chatri Wala Kuan, Lado Sarai, New Delhi, Delhi 110030	011 4109 9859	info@makelovenotscars.org
18	Leprosy Mission	CNI Bhavan 16,Pandit Pant Marg, New Delhi-110001	+91-11- 43533300,23716920	info@leprosymission.in

19	Delhi Foundation for Deaf Women	First Floor, DDA Community Hall, Chandi Wali Gali, Paharganj, New Delhi, Delhi 110055	011 2358 3276	info@dfdwnet
20	AADI – Action for Ability Development and Inclusion	2, Balbir Saxena Marg Hauz Khas, New Delhi- 110016	+91-11-26864714, 26569107	aadi@aadi-india.org
21	Shanta Memorial Rehabilitation Centre	89gf U-3, P-II, Jayadev Vihar, Chandrasekharpur, Bhubaneswar, Odisha 751023	0674 230 0274	www.smrcoressa.org



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