

Memorandum to Smt. Renuka Chaudhary, Honourable Minister for Women and Child Development

Subject: Amendments required on several laws which affect women from the perspective of UN Convention on Rights of Persons with Disabilities

The 2001 Census estimates that there are over 9 million women with disabilities in India constituting 3.5% of the population. However other researches estimate that there are over 20 to 35 million women with disabilities in India. Research on women with disabilities also reveals that 98% of them are illiterate; less than 1% can avail healthcare and rehabilitation services. The majority of women with disabilities in India suffer the *triple discrimination of being female, being disabled and being poor*. They are not only a socially invisible category but their plight is worse than both men with disabilities and other non-disabled women.

Women with disabilities face violations of their rights at every level. They are considered a financial burden and social liability by their families. They are denied opportunities to movement outside the home and access to education and meaningful employment. They are viewed as asexual, helpless and dependant. Physical sexual and mental abuse inflicted on them are manifold in nature and they are much more prone to face these violence than their non disabled counterpart. There has been a consistent and systemic denial of traditional roles ascribed to women to this particular group.

India has ratified both the Convention on Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities; it becomes imperative to include in our legislations the issue of women with disabilities in a comprehensive manner. Not only are we advocating for engendering the Persons with Disabilities Act (Equal Opportunities, Protection of Rights and Full Participation), 1995, but we strongly feel that it is important to look into the laws and policies which are directly under the your Ministry to be looked at from a disability perspective. The Ministry of Women and Child Development should make a conscious effort to incorporate the spirit of UNCRPD, which came into force recently to bring sustained changes in the lives of women with disabilities.

We are hereby mentioning few laws, which affect lives of women in general and needs to be looked into from a disability angle.

1. Protection of Women from Domestic Violence Act, 2005

According to Article 23 of UNCRPD section c "Persons with disabilities, including children, retain their fertility on an equal basis with others". Studies and evidence shows that a large number of families consider hysterectomy to be the only solution to protect mentally disabled young girls from sexual abuse and unwanted pregnancy. Instead of attempt to stop sexual violence to protect family honour, hysterectomy is done without considering dire effects of the same on the young woman. However, there has been no mention of this form of violence in the 2005 DV Act. Therefore we recommend

- Specific forms of violence like forced hysterectomy on women with disabilities by family members should be included in the section-Definition of this Act.
- Also, Office of Protection Officer needs to be accessible to women with disabilities.

2. The Pre-conception and Pre-natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994

According to Article 10 Right to life of UNCRPD, "States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others."

- The PCPNDT Act needs to be reviewed particularly Chapter III and appropriate amendments to be made in to the above mentioned Article.

3. Medical Termination of Pregnancy Act, 1971

As mentioned earlier, according to Article 10 Right to life of UNCRPD, "States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others."

- Clause 2 B ii of the Medical Termination of Pregnancy Act needs to be amended in accordance to the Article 10 of UNCRPD.

4. Inheritance and Adoption Laws

Article 12, Equal recognition before the law of the UNCRPD says that 1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law. 2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Therefore we need to review the Inheritance and Adoption laws of our country whereby women with disabilities can enjoy similar rights as their non disabled counterpart.

5. All laws related to Marriage

Article 23, Respect for home and the family of UNCRPD states that States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that: (a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized.

- We recommend that all the laws pertaining to Marriage needs to looked at as some of our laws exclude person who is "mentally unsound" to get married. As marriage plays a very important role in the status of women, there is a need to consider all the laws pertaining to marriage and make necessary changes.

We would also like to mention here that

The National Commission for Women in its draft of the Criminal Law Amendment Bill, 2006 attempts to provide specially for sexual assault of women with disabilities. Section 376(2)(i) of the proposed Bill imposes a minimum term of ten years imprisonment that may extend to life and fine for the commission of sexual assault on a "person suffering from mental and physical disability". Presumption of the absence of consent is also proposed under Section 114A of the Indian Evidence Act, 1872 that shall be invoked in the above case, shifting the burden of proof on the accused. Section 376(2)(i) is problematic as in the event that a woman with mental disabilities alone or with physical disabilities and not both mental and physical disabilities is sexually assaulted this section will not apply. Also the word "suffering" is objectionable. As the Bill is in the draft form, it must be revised.

Also, as amendment of law is a time taking process and women with disabilities are much more vulnerable to violence than their non disabled counterpart, we request to the WCD Ministry is to pass an order (which can be done without delay) that

National Women's Commission and all State Women's Commission office will have a specific cell to look into cases of Violence on women with disabilities.

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