

Submissions to Justice Verma Committee by Women with disabilities

Suggestions to the Committee from the Perspective of Women with Disabilities

January 4, 2013

Justice J.S. Verma

New Delhi

Sir,

We the representatives of various organisations representing persons with disabilities while welcoming the setting up of this committee under your chairmanship are concerned over its limited terms of reference. It would have been better if the terms of reference of the committee had been much broader and not limited to two issues.

In the event, we would like to place before the Committee certain suggestions from the perspective of women with disabilities.

During the course of the last couple of years there has been an increase in the number of cases of sexual assault on girls and women with disabilities. Despite the increasing number of incidents being reported, sexual assaults and violence against women with disabilities continue to remain underreported.

Girls and women with disabilities are more vulnerable to exploitation. They are considered as soft targets with the perpetrators assuming that they can get away easily. In many cases such women are unable to comprehend or communicate about such acts of violence or assault they face. Some reports suggest that they are upto three times more likely to be victims of physical and sexual abuse as compared to other women.

In many cases they are not taken seriously either by the police or the judicial system. Their difficulty in expressing themselves compounds matters even further.

India ratified the United Nations Convention on Rights of Persons with Disabilities(UNCRPD). Article 6 of the Convention mandates that the country make specific provisions to end discrimination and violence faced by women with disabilities.

Further, Article 16 of the UNCRPD under the head “Freedom from Exploitation, Violence and Abuse” mandates that:

“1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

“2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age, gender and disability-sensitive.

“3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

“4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender and age-specific needs.

“5. States Parties shall put in place effective legislation and policies, including women and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.”

There is an urgent necessity for laws in the country to be amended to provide for these and harmonise them with the UNCRPD.

Compilation of Data

Unfortunately, there are no consolidated figures with regard to violence against women with disabilities. But the magnitude and scale of the attacks can be gauged by the fact that in the year 2012 alone there have been dozens of cases of sexual violence on women with disabilities reported in media from the state of West Bengal alone. Despite this high incidence, no attempt has been made to even map the magnitude of the problem. Consequently, neither the NCRB nor any other source has authentic figures.

It would therefore be pertinent that when such cases are registered, crimes against women with disabilities be also recorded as a sub-category like in the case of crimes against women from the scheduled castes, scheduled tribes etc.

Provide Adequate Support to Victims

A team from the National Commission for Women visited West Bengal on April 3 and 4, 2012 in the wake of reports of increasing attacks against women with disabilities. It had made the following recommendations:

“We would like to recommend that the requirements of persons with special needs have to be kept in mind by all police stations and medical establishments so that they are provided with handholding support including services of interpreters, readers, professionals, psychologists and NGOs depending on the nature of the case. A panel of experts for this purpose can be prepared for each district in consultation with the Disabilities Commissioner and the WCD Department”

It would also be pertinent here to look into the rules framed under the Protection of Children from Sexual Offences Act 2012.

Rules framed under this Act mandate that:

- (1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators and special educators for the purposes of the Act, and this register shall be made available to the Special Juvenile Police Unit (hereafter referred to as “SJPU”), local police, magistrate or Special Court, as and when required.
- (2) The qualifications and experience of the interpreters, translators, Special educators, and experts, engaged for the purposes of sub-section (4) of section 19, sub-sections (3) and (4) of section 26 and section 38 of the Act, shall be as indicated in these rules.
- (3) Where an interpreter, translator, or Special educator is engaged, otherwise than from the list maintained by the DCPU under sub-rule (1), the requirements prescribed under sub-rules (4) and (5) of this rule may be relaxed on evidence of relevant experience or formal education or training or demonstrated proof of fluency in the relevant languages by the interpreter, translator, or special educator, subject to the satisfaction of the DCPU, Special Court or other authority concerned.
- (4) Interpreters and translators engaged under sub-rule (1) should have functional familiarity with language spoken by the child as well as the official language of the state, either by virtue of such language being his mother tongue or medium of instruction at school at least up to primary school level, or by the interpreter or translator having acquired knowledge of such language through his vocation, profession, or residence in the area where that language is spoken.
- (5) Sign language interpreters, Special educators and experts entered in the register under sub-rule (1) should have relevant qualifications in sign language or special education, or in the case of an expert, in the relevant discipline, from a recognized University or an institution recognized by the Rehabilitation Council of India.
- (6) Payment for the services of an interpreter, translator, Special educator or expert whose name is enrolled in the register maintained under sub-rule (1) or otherwise, shall be made by the State Government from the Fund maintained under section 61 of the Juvenile Justice Act, 2000, or from other funds placed at the disposal of the DCPU, at the rates determined by them, and on receipt of the requisition in such format as the State Government may prescribe in this behalf.

(7) Any preference expressed by the child at any stage after information is received under subsection (1) of section 19 of the Act, as to the gender of the interpreter, translator, Special educator, or expert, may be taken into consideration, and where necessary, more than one such person may be engaged in order to facilitate communication with the child.

(8) The interpreter, translator, Special educator, expert, or person familiar with the manner of communication of the child engaged to provide services for the purposes of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest. He shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973.

(9) In proceedings under section 38, the Special Court shall ascertain whether the child speaks the language of the court adequately, and that the engagement of any interpreter, translator, Special educator, expert or other person familiar with the manner of communication of the child, who has been engaged to facilitate communication with the child, does not involve any conflict of interest.

(10) Any interpreter, translator, Special educator or expert appointed under the provisions of the Act or its rules shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872.

It would be in the fitness of things if similar provisions are made for adult women with disabilities who are subjected to sexual abuse.

We suggest that concerned Ministries and Departments be directed to issue advisories to police stations, courts, legal services authorities, government hospitals and health centres to provide all the required support including, access to interpreters and social workers to the women with disabilities who approach them.

Also there needs to be accountability in the matter of making services of an interpreter/counsellor available to victims.

Training Of Police/Judiciary & Medical Professionals

Training/sensitisation of police officers, judiciary and medical professionals on issues concerning persons with disabilities, particularly women with disabilities and the violence they face should be made mandatory.

We suggest that there must be Standard Operating Procedures (SOP) in place for the police to follow while investigating cases of sexual assault. These SOPs must refer to the specific needs of women with disabilities, at each stage of the investigation and the role of the police during trial.

Abuse within Institution

A large number of women with disabilities are abused within institutions like hospitals and shelter homes.

Apart from sexual abuse, at times in some institutions these women are not clothed properly and are also subjected to verbal abuse. The guidelines issued by the NHRC should be strictly adhered to in such cases.

A monitoring and regulatory authority has to be established at the district level consisting of activists and specialists from the district who will have visiting rights and access to these places for regular check ups. Periodic inspection of these institutions by the authority so established should be made mandatory.

Counselling and Rehabilitation

Policy and legal measures to prevent and reduce violence against women with disabilities and shield them against such abuses by themselves are not enough. Necessary legal aid/help to bring the perpetrators of such crime to justice has to be provided.

Victims of such crimes have to be provided with adequate and appropriate counselling facilities. In the case of a victim getting pregnant consequent to sexual abuse, appropriate counselling and options should be offered to the victims.

Rehabilitation of such victims is also paramount. Rehabilitation measures should equip the victims with knowledge and skills to be able to engage in productive livelihood.

In the annexure appended herewith we have cited certain instances of sexual assaults against women with disabilities to demonstrate the nature of the vulnerabilities faced by women with disabilities and how they have been handled by the existing institutional and legal machinery.

We hope that the Committee will consider these issues also seriously as also the wider issues involved.

Signatory organisations, in alphabetical order:

Aarth Astha, Delhi

Centre for Women's Development Studies, Delhi

Centre for Care of Tortured Victims, Kolkata

Differently-Abled Welfare Federation, Kerala

Gujarat Viklang Adhikar Manch, Gujarat

Haryana Viklang Adhikar Manch, Haryana

Himachal Viklang Adhikar Manch, Himachal Pradesh

Human Rights Law Network, Delhi
Janarth, Aurangabad, Maharashtra
Jharkhand Viklang Morcha, Jharkhand
Karnataka Rajya Angavikalara Mattu Palakara Okkota
Lakshwadeep Disabled Association, Lakshwadeep
Manipur Rights for the Disabled, Manipur
Marg, Aurangabad, Maharashtra
Mehac Foundation, Delhi
Paschim Banga Rajya Prathibandhi Sammelani, West Bengal
Platform for Rights of Disabled, Orissa
Point of View, Mumbai
Sangarsha Apang Ani Palak Sangh, Aurangabad
Snehi, Delhi
Sruti Disability Rights Centre, Kolkata, West Bengal
Tamilnadu Assn for the Rights of Differently-Abled & Caregivers, Tamilnadu
The Banyan, Tamilnadu
Vikalangula Hakkula Jathiya Vedika, Andhra Pradesh
Prepared by:
National Platform for the Rights of the Disabled
4, Ashoka Road, New Delhi 110 001
Tel. 23369598, 9868768543

Annexure

Certain Instances of Sexual Assaults Against Women With Disabilities Demonstrating The Nature Of The Vulnerabilities

Sexual Assault On a Girl with Intellectual Disability

A young girl with intellectual disability was repeatedly raped and abused within Ashreya, a government residential institute in Chandigarh. The girl was an orphan who was raised by the

Missionaries of Charity and later shifted to this home. She did not complain at any point of time. The abuse came into light when she was found to be pregnant.

The Supreme Court Judgement CIVIL APPEAL NO.5845 OF 2009 (Arising out of S.L.P. (C) No. 17985 of 2009) Suchita Srivastava & Anr. ...Versus Chandigarh Administration ... observed:

“On 16.5.2009, a medical social worker and a staff nurse working at ‘Ashreya’ observed that the victim was showing signs of nausea and had complained about pain in her lower abdomen in addition to disclosing the fact that she had missed her last two menstrual periods. Acting on their own initiative, the medical social worker and the staff nurse conducted a pregnancy test with a urine sample and found it to be positive. Following this development, a medical board consisting of two gynaecologists and a radiologist was constituted on 18.5.2009. The gynaecologists then examined the victim in a clinical environment and concluded that she had been pregnant for 8-10 weeks at the time. The radiologist also confirmed the fact of pregnancy on the basis of an ultrasound examination and recorded a gestation of approximately 9 weeks on the same day.”

The girl was unable to comprehend that she was being assaulted. Secondly, she was also unable to identify the perpetrators. This case is being cited to underline the fact that in cases where women with mental illness or intellectual disability are assaulted they are often not able to complain and even their care-givers in some cases are unaware of the abuse they are subjected to.

In a case reported from Aurangabad, Maharashtra a few days back, an attempt was made to molest a 29 year old woman with intellectual disability who at the time of the incident was alone in the house. She stays with her brother. The brother was initially reluctant to even lodge a complaint at the Police Station.

Sexual Assault On A Blind Girl

Given below is the testimony of a Blind girl at a Public Hearing on Issues affecting Women with Disabilities organised by the Jadavpur University in collaboration with Sruti Disability Rights Centre, Kolkata.

“I face sexual abuse regularly. I have to commute to college by public bus. I need help of others in crossing roads and even during bus rides. One day I asked a man who was standing at the bus stop to help me to get into the bus. I asked him to hold my hand and then I realised he was touching my body also. I was very nervous – I thought if I protested he will let me go off and I will meet with an accident. You know how crowded buses in Kolkata are. This man kept on touching me in an inappropriate manner inside the bus. But I could not protest. And if I would have said anything, who would have believed? I can not see, so for me to identify him would be difficult. And others would think that he held my hands just to help me board the bus. So would they believe me?

“These kinds of incidents happen regularly. I do not know if it happened to any of my friends, I never discussed the same with them. This is something, I think shameful to discuss.”

Incidents of Rape of Women with Hearing Impairment

Several cases of rape/assault on women with hearing/speech impairment have been reported during the course of the last year.

In one such case in February 2012 a hearing impaired girl was raped by a doctor inside the premises of the Bankura Medical College in West Bengal. According to the complaint lodged by the victim's mother, the resident doctor of the hospital took the victim for medical examination inside his room and raped her. She could not identify the accused in the identification parade as she later told her mother that she was not informed by police or any concerned person what to do when she was taken inside for the same. As she was hearing & speech impaired and illiterate as well, the authorities did not know how to communicate with her.

In another case, again from West Bengal a national level Para athlete who had won several medals including at the National Championship in 2006, was on her way back from Raiganj to her house in Hemtabad on June 23, 2012 in an auto-rickshaw. Taking advantage of the fact that the girl was hearing and speech impaired, the auto-driver took the girl to his house where he raped her. In this case, the girl was able to give a complaint in writing.

Assaults within Institutions

The Case of Dulal Smriti Samsad (Hooghly, West Bengal)

A young woman's body was found buried within the compound of a NGO run home, Dulal Smriti Samsad, in July 2012. Investigations found out that Guriya, a destitute woman who was mentally ill, was brought to this home by West Bengal police was subjected to sexual abuse regularly and killed.

The incident came to light after one of the villagers staying nearby got wind of it. He informed others and later on the story was picked up by the media.

It was found that despite the home being registered under the Persons with Disabilities Act, National Trust Act as well as Juvenile Justice Act, there was no monitoring by any government agency. During investigations it also came to light that several other inmates (most of them were destitute mentally ill or women with intellectual disability) were routinely sexually abused. Men from outside the home, with connivance of officials of the home committed the crime after dusk. Some of the women when interrogated were also able to give names of men who exploited them. Medical examination of some of the victims also revealed signs of regular sexual intercourse. Copper-T was found inserted in the bodies of a few inmates.

It is obvious that this abuse and exploitation of hapless women was happening over a period of time, as the victims were unable to express themselves or those who were hearing them did not believe their versions. Even during questioning after the first death was reported, the women were unable to narrate their experience, given their mental condition.