**English**

**Questionnaire on “disability-inclusive policies”**

**Response from the Bapu Trust for Research on Mind & Discourse, India. www.baputrust.com Email: bt.admfin09@gmail.com Tel: 0091-20-26441989**

1. Please provide information on how your country is considering the rights of persons with disabilities in their **policies aimed at implementing and monitoring the Sustainable Development Goals**, including:

* **Existing national strategies and action plans**

The Indian government has committed to the Incheon Strategy and the SDGs, working towards 'making the rights real' for the decade of persons with Disabilities, 2013-2022 [[1]](#footnote-1). India has adopted social policies since long, especially for the urban poor, rural development, water, natural resource conservation, women and child empowerment. However, inter-sectoral linkages with disabilities is hard to find in extant schemes [[2]](#footnote-2). A huge concern was raised by DPOs about the census data [[3]](#footnote-3). Development data does not yet feature persons with Disabilities in all thematic areas, and persons with disabilities remain invisible in the State recordkeeping. Certain development efforts can have good psychosocial impact, reducing the need for institutionalization [[4]](#footnote-4) . However, such linkages between integrated development and wellbeing are not recognized by policy. Recent policy initiatives towards skill building and employability does not include persons with disabilities. A number of new Bills pending before the Parliament, such as the Food Security Bill, does not mention persons with disabilities. The extant Persons with Disabilities Act of 1995 is very limited in terms of human rights, and providing only some entitlements for some groups of persons with disabilities (e.g. employment and housing for the blind).

A Rights of Persons with Disabilities Bill was drafted in 2010, and 'dressed up' for the Parliament [[5]](#footnote-5). This had comprehensive coverage of SDG goals. However, it has not come into Parliamentary process yet [[6]](#footnote-6) leaving DPOs dismayed [[7]](#footnote-7) by the inordinate delay. Other DPOs are dismayed because, the RPD Bill has provisions for plenary guardianship for persons who are identified as 'mentally ill'. The RPD Bill, once legislated, will be a push back for all persons with disabilities from the Development sector because of this new legal turn of deprivation of full legal capacity, found in a parent legislation. Earlier disability law was silent on the topic of legal capacity.

The biggest hurdle to the realization of SDGs for some persons with disabilities is the mental health law. A Mental Health Care Bill of 2013 was proposed to replace the Mental Health Act of 1987 [[8]](#footnote-8). However, the MHC Bill provides a highly corrupted version of CRPD inspired concepts such as personal autonomy, informed consent, voluntary care, liberty, and legal capacity. For example, the Bill has provided for extensive involuntary admission methods. ECT and psychosurgery have been legalised through the Bill. Third party consent has been liberally allowed not only for medical treatment, but for a variety of other life decisions as well. The MHC Bill is in advanced stage of admission into the Parliamentary process. If implemented, the Bill will result in phenomenal increase in mental institutions, especially by private industry, and further drift away from disability inclusive development. The Bill says nothing about right to access Development.

A National Mental Health Policy was created in 2015 by the Ministry of Health[[9]](#footnote-9), giving accent for community based mental health services. However, the policy is not inspired by the UNCRPD, covering largely only medical treatment issues for people targeted within public health system as 'mentally ill' in communities.

The Disability Affairs Department, Ministry of Social Justice and Empowerment has created a program on De-addiction, however, as a stand alone program not linked with other developments in the health sector. This and other efforts of the Indian Government suggest a poor inter-sectoral co-ordination between various Ministries in the implementation of UNCRPD and SDGs. Medical emphasis is more in such efforts, without linkages with overall community Development.

* **Budget allocation for their implementation**

According to publicly cited figures in India, mental health spending is 0.6% of the overall health budget [[10]](#footnote-10). However, more money does not mean better or more inclusive and disability sensitive services. For example, about 80% of this budget is mobilized in the maintenance of mental institutions. In the XII Plan, government released largest sums of monies than ever before, for the upgradation of psychiatry departments and to create Centers of Excellence. Erstwhile mental institutions have been so 'upgraded', however, evaluation has not been done of the overall design of service provision to bring any evidence that the frame of service delivery has moved from custody to care. Under the national mental health policy, spending is begun on 'community care', however, community care design is only about medical services (medication and institutionalization). Private expenditure is unaudited, with growing rise of private mental institutions, based on involuntary treatment. Mental health law allows 3 months of involuntary commitment. Most private institutions keep clients until 6 months or more. It therefore becomes profitable business to incarcerate, in such private institutions. A variety of financing options are available in India, starting from 5 star closed door facilities, to the more humble 300 USD a month kind of paid up facilities. Cost is the burden of families.

* **Existing mechanisms or frameworks to monitor their implementation**

Monitoring is presently being done through the office of the Chief Commissioner of Disabilities. The office of the CCD may undertake their own initiative and make inquiries; or they process complaints received. Mostly, only complaints are processed. The Disability governance has a mechanism right down to the District level, with state level and district level co-ordination or local committees. However no evaluation is done, of their performance. Some groups such as persons with psychosocial disabilities do not get included. There is the perception within governance, also captured within the proposed Rights of Persons with Disabilities Bill, that 'mental illness' is a health subject, and Ministry of Social Justice and Empowerment need not be concerned with it. Therefore, the entire batch of disability departments, legal instruments, and other monitoring frames have excluded the impact of policy or programs on persons with psychosocial disabilities.

Monitoring of mental institutions which is supposed to be done by the Health Ministry under the Mental Health Act of 1987, is very weak. In last decade, hundreds of private mental institutions have sprung up all over India. The Supreme Court of India ordered the construction of atleast 1 mental institution per district. This has opened a flood gate for private business. Privatization of mental hospitals have flourished, with little or no regulation. Violations abound, as reported by a recent Human Rights Watch Report, 'Treated worse than animals' (2015).

Sometimes other Human Rights mechanisms may step in. For example, the Womens' Commission at Central level, the NHRI in New Delhi have sporadically made efforts to step in, with studies and recommendations. A Supreme Court case *suo moto* started in 2002 (famously called the *Erwadi Writ Petition* of 2002) and having broad spread of human rights concerns about institutions, dwindled down to poor case hearing under the *Amicus Curiae* Adv Sanghvi. Occasionally, the High Court may intervene into matters concerning a divorce case or a property matter, with respect to incapacity contests between family members.

Typically, guardianship arrangements and forced admissions do not come under any kind of judicial monitoring mechanisms. Due to developments of the last decade, involuntary commitment is increasingly seen as routine administrative matter, rather than as deprivation of a constitutional right (Right to liberty). Likewise, guardianship is seen as a issue of an administrative letter and a certificate, rather than as deprivation of autonomy [[11]](#footnote-11). With the MHC Bill, this poor monitoring by the justice system of constitutional rights may be diluted further to zero level monitoring.

* How do these strategies/plans take into consideration the situation of women and girls with disabilities, and of children and older persons with disabilities?
* How is the participation of persons with disabilities and their representative organizations ensured in the development and implementation of such strategies/plans?

1. *Please provide information on the* ***legislative and policy framework in place in your country concerning non-discrimination****, including*:

* *Whether “disability” is specifically mentioned as a prohibited ground of discrimination*

Indian constitution has a non-discrimination prohibition on several counts (gender, caste, religion, language, etc.). However, 'disability' is not counted as a prohibited ground of discrimination.

Under the new proposed Rights of Persons with Disabilities Bill, discrimination has been widened to include discrimination on grounds of disability. Non-discrimination has included reasonable accommodation. But the Bill has been pending before governance since 2010.

India, being a post colonial state, continues to practice the legacy of 'unsoundness of mind' and 'legal incapacity' through a variety of laws, interpreted as 'mental illness' in modern case law. Because of the practice of over 150 such incapacity provisions, persons with mental health problems and psychosocial disabilities are discriminated against and lose their access to Development processes. For example, persons of 'unsound mind' do not have the human right to participate in political processes.

Special mental health legislation exists, that result in discrimination and violation of Article 12, 14, 17, 19, 25. The legislation discriminates persons with mental health problems and psychosocial disabilities, by depriving them to the same status of bio-medical ethics as others recognized as 'patients' before the health system. Due to the penal colour given to persons of 'unsoundness of mind', errors of category come into policy, where persons with mental health problems and psychosocial disabilities are seen closer to those accused of crime rather than health care subject. The health professionals involved in support and care of persons with psychosocial disabilities become alienated from their professional ethics, and are rendered guardians on behalf of the state.

* The existence of any budgetary mechanism to ensure the provision of reasonable accommodation by public entities
* Whether the denial of provision of reasonable accommodation amounts to discrimination

The new proposed disability law carries a provision, however, the new law also carries provisions on plenary guardianship for the 'mentally ill'.

* The existence of any affirmative action measures for persons with disabilities

Since persons with 'mental illness' are considered as *persona non grata* before the law, their subjecthood is in question, and there is universal non-recognition of the obligation to provide reasonable accommodation to them.

* The existence of any legal, administrative or other effective remedies available for persons who have been subject of discrimination on the basis of disability (including denial of reasonable accommodation)
* The establishment of governmental agencies or other similar institutions to guarantee to persons with disabilities equal and effective protection against discrimination.

1. Please provide information on the **legislative and policy framework in place in your country concerningaccessibility for persons with disabilities** in relation to the physical environment, transportation, information and communications, and to other facilities and services; including:

* The existence of national standards, guidelines, and regulations on accessibility and universal design, including access to Information and Communication Technologies,
* The existence of time bound action plans to make public and private facilities and services accessible for persons with disabilities,
* The existence of accessibility requirements for public procurement,
* The existence of any enforcement mechanism of accessibility standards,
* The provision of training on accessibility issues for State officials and other actors.

1. Please provide information on the **legislative and policy framework in place in your country concerning support services for persons with disabilities**, including:

* The diversity and coverage of services available (e.g., services for supported decision-making, communication, mobility, personal support, housing and living arrangements, access to general services such as education, employment, justice and health; and other community services)
* The availability of certified sign language interpreters
* The types of service delivery arrangements (e.g. direct provision, public-private partnerships, partnerships with community-based or non-government organizations, contracting out, privatization)
* The financial mechanisms to ensure affordability of support services for all, persons with disabilities
* How services enable direct choice and control of users with disabilities?

1. Please provide any **other relevant information** (including information from surveys, censuses, and administrative data – statistics, reports, and studies),in relation to the **implementation of existing disability-inclusive policies and action plans in your country**.

1. http://pib.nic.in/newsite/PrintRelease.aspx?relid=116334, accessed on 18-05-2016 Full text at http://www.dnis.org/The-Right-of-Persons-with-Disabilities-Bill.pdf [↑](#footnote-ref-1)
2. see for example, an old report in the area of inclusion in the labour market, http://www.ilo.org/wcmsp5/groups/public/---ed\_emp/---ifp\_skills/documents/publication/wcms\_107861.pdf [↑](#footnote-ref-2)
3. www.newindianexpress.com/.../2014/.../article1998017.ece accessed on 18-05-2016; and following. [↑](#footnote-ref-3)
4. Bhargavi Davar , Deepali Deshmukh, Sadaf Vidha, Aruna Deshpande, Swati Shinde, DharmaPadalkar (2016).  Mental health and Development:Multi-site study associating development efforts with mental distress, preliminaryfindings. Paper presented at ICCPHW 2016, Jamia Millia Islamia, New Delhi. [↑](#footnote-ref-4)
5. www.prsindia.org/billtrack/the-right-of-persons-with-disabilities-bill-2014-3122, accessed on 18-05-2016 [↑](#footnote-ref-5)
6. http://timesofindia.indiatimes.com/topic/Rights-of-Persons-with-Disabilities-Bill [↑](#footnote-ref-6)
7. Recently, a cabinet Minister, Mrs. Maneka Gandhi, attracted public disdain when she stated, in the context of the RPD Bill, that 'Schizophrenics cannot work'. See February 20th 2016, 'We can work', www.wecanwork.tumblr.com [↑](#footnote-ref-7)
8. www.prsindia.org/billtrack/the-mental-health-care-bill-2013-2864 [↑](#footnote-ref-8)
9. Ministry of Health & Family Welfare, National Mental health Policy, http://www.mohfw.nic.in/index1.php?lang=1&level=2&sublinkid=4723&lid=2964 [↑](#footnote-ref-9)
10. http://infochangeindia.org/agenda/access-denied/less-than-1-of-our-health-budget-is-spent-on-mental-health.html accessed on 18-05-2016 [↑](#footnote-ref-10)
11. Davar, B. (2012). Legal Frameworks for and against people with psychosocial disabilities. *Economic and Political weekly, XLV11(52): 123-131.*  [↑](#footnote-ref-11)