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INVISIBLE VICTIMS OF SEXUAL VIOLENCE

Access to Justice for Women and Girls with Disabilities in India



Invisible Victims of Sexual Violence

Access to Justice for Women and Girls with Disabilities in India

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Terminology

Consistent with the language of the Convention on the Rights of Persons with Disabilities (CRPD), this report refers to “women and girls with disabilities” rather than “disabled women and girls.”¹ The CRPD acknowledges that disability is “an evolving concept,” but also stresses that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.”² As explained by the World Health Organization (WHO), “defining disability as an interaction means that ‘disability’ is not an attribute of the person.”³ Progress on improving social participation can be made by addressing the barriers that hinder persons with disabilities in their day-to-day lives.

The terms below acknowledge the complex interactions between a person and social norms that comprise the experience of disability. Common language references to disabilities also appear in direct quotes when this language has been used by interviewees.

Cerebral palsy: Cerebral palsy is a neurological condition that affects body movement, muscle control, muscle coordination, muscle tone, reflex posture and balance. It can also impact fine motor skills. Every case of cerebral palsy is unique to the individual. Other complications such as cognitive delay, seizures and vision or hearing impairment also commonly accompany cerebral palsy.⁴

Child: As per the Convention on the Rights of the Child, any person under age 18.⁵

¹ Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, Annex I, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008. India ratified the CRPD in 2007. This approach emphasizes the person before the disability, focuses on the disabling barriers erected by society, and emphasizes the state responsibility to remove these barriers in order to achieve equality.

² Ibid.

³ World Health Organization and World Bank, “World Report on Disability 2011,” http://www.who.int/disabilities/world_report/2011/report.pdf (accessed July 3, 2016); Punarbhava, “Census of India: 2011 Data on Disability,” <http://punarbhava.in/index.php/disability-register/census-2011-disability-data.html> (accessed July 4, 2016).

⁴ “Definition of Cerebral Palsy,” CerebralPalsy.org, <http://www.cerebralpalsy.org/about-cerebral-palsy/definition> (accessed November 7, 2016).

⁵ Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990, article 1. India ratified the CRC in 1992.

Discrimination: Under India’s Rights of Persons with Disabilities Act, 2016, “discrimination” in relation to disability means “any distinction, exclusion, restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation.”⁶

First Information Report (FIR): A document with information about the commission of a cognizable offense given to a police officer, which sets the process of criminal justice in motion. It is only after the FIR is registered with the police that they take up investigation of the case.

Gram Panchayat/Panchayat: Village-level administration, usually elected officials, responsible for preparing and executing plans for economic and social development.

Intellectual disability: A condition characterized by significant limitations both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behavior, which covers a range of everyday social and practical skills. Intellectual disability forms a subset within the larger universe of developmental disability, but the boundaries are often blurred as many individuals fall into both categories to differing degrees and for different reasons. Examples of intellectual disability include Down Syndrome and some forms of cerebral palsy.

Multiple disabilities: Refers to having more than one disability.

Person with disability: Under India’s Rights of Persons with Disabilities Act, 2016, a “person with disability” means “a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.”⁷ The new legislation contains a schedule identifying 21 “impairments” for the purpose of certification.⁸

⁶ The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016.

⁷ Ibid.

⁸ Ibid, Schedule.

Psychosocial disability: The preferred term to described persons with mental health conditions such as depression, bipolar disorder, schizophrenia and catatonia. This term expresses an interaction between psychological differences and social or cultural limits for behavior, as well as social stigma directed at persons with mental health conditions.⁹

Sexual violence: As used in this report, “sexual violence” includes both penetrative and non-penetrative sexual acts using violence.

Special educator: As used in this report, “special educator” refers to someone who facilitates communication with a person with a disability and provides support to them in the criminal justice process. The preferred term in the international disability community is “support person” so we have used both terms interchangeably in this report.

⁹ Human Rights Watch, *“Treated Worse than Animals”: Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India*, August 2014, https://www.hrw.org/sites/default/files/report_pdf/india1214.pdf (citing World Network of Users and Survivors of Psychiatry, “Manual on Implementation of the Convention on the Rights of Persons with Disabilities,” 2009, <http://www.chrusp.org/home/resources> (accessed November 23, 2016), p. 9).

Summary

The police asked me very nasty things like how it felt for me. I told them I was totally unconscious, so how would I know? The police said things like, ‘She’s mental, why should I pay attention to her?’

—Susmita, 26, a woman with a psychosocial disability from Kolkata, West Bengal, whom four male neighbors sedated and gang-raped in February 2014

[The police] should be sensitized to the emotional and the psychological needs of the victim and how to work with women and girls with disabilities. It is important to sensitize every officer—from top to bottom.

—Sanjay Gunjyal, inspector general of police from Uttarakhand

In June 2013, Chandra, a 12-year-old girl with cerebral palsy, was kidnapped, raped and left bleeding in a field near her home in West Bengal state, India. Chandra was unable to speak, sit, stand, or walk independently, so she could not call for help or go home. After several hours, some villagers found Chandra in the field. She died a few months later due to health complications.

Women and girls with different disabilities face high risk of sexual violence in India. Those with physical disabilities may find it more difficult to escape from violent situations due to limited mobility. Those who are deaf or hard of hearing may not be able to call for help or easily communicate abuse, or may be more vulnerable to attacks simply due to the lack of ability to hear their surroundings. Women and girls with disabilities, particularly intellectual or psychosocial disabilities, may not know that nonconsensual sexual acts are a crime and should be reported because of the lack of accessible information.

Access to justice is particularly difficult for women and girls with disabilities largely due to the stigma associated with their sexuality and disability. As a result, they often do not get the support they need at every stage of the justice process: reporting the abuse to police, getting appropriate medical care, and navigating the court system. As former chairwoman of the National Commission for Women, Lalitha Kumaramangalam, said in December 2015: “One of the biggest challenges for women [with disabilities] is access [to services], not just physical but access across the board.”

After the fatal gang rape of a young woman in Delhi in December 2012, sexual violence against women in India came under a global spotlight. The government responded to the public outrage and civil society protests by strengthening laws—known as The Criminal Law (Amendment) Act, 2013 (the 2013 amendments)—against sexual violence, which it declared its intent to enforce.

The amendments include several provisions to safeguard the rights of women and girls, including those with disabilities, and facilitate their participation in the investigative and judicial processes. For example, women and girls with disabilities have the right to record their statement with police in their home or a place of their choice, and the right to assistance by an interpreter or support person when the complaint is recorded and during trial. The protections also apply to women who are seriously physically hurt or who have a temporary disability.

This report, based on 17 cases of sexual violence against women and girls with disabilities, comes five years since these amendments were adopted, and follows Human Rights Watch’s November 2017 report “*Everyone Blames Me*”: *Barriers to Justice and Support Services for Sexual Assault Survivors in India*, which found that rape survivors still face significant barriers obtaining justice and critical support services because legal and other reforms have not been fully realized.

This report finds that while the 2013 amendments have made significant progress in responding to the widespread challenges that victims of sexual violence endure, they have yet to properly develop and implement support for survivors with disabilities in the form of trainings and reforms throughout the criminal justice system. It highlights gaps in enforcement and calls for concrete measures to address the needs of women and girls with disabilities seeking justice for abuse.

These women should no longer remain the invisible victims of sexual violence.

Reporting Sexual Violence

In 2013, Kanchana, a 19-year-old woman with an intellectual disability from a village in Hooghly district in West Bengal, was raped on multiple occasions by a man from her neighborhood. Kanchana was unaware that she should report that she was raped, which

was only discovered when she was discovered to be five-months pregnant. Even then, it was difficult for her to explain what had happened.

This is not unusual. Globally, women and girls with disabilities face unique barriers to reporting that hinder their access to redress. Indian authorities acknowledge this problem. According to the *2014 Guidelines and Protocols for Medico-Legal Care for Victims/Survivors of Sexual Violence* issued by India's Ministry of Health and Family Welfare, women and girls with disabilities face particular barriers to reporting sexual abuse:

...[be]cause of the obvious barriers to communication, as well as their dependency on caretakers who may also be abusers. When they do report, their complaints are not taken seriously and the challenges they face in expressing themselves in a system that does not create an enabling environment to allow for such expression, complicates matters further.

Yet, the government has no system to even register attacks against women and girls with disabilities, let alone formulate strategies and mechanisms to respond to their particular needs. A 2014 report by the United Nations Special Rapporteur on violence against women, Rashida Manjoo, following her visit to India, said a consistent lack of disaggregated data collection “renders the violence committed against women with disabilities invisible.”

Interacting with Police

Women and girls with disabilities may require accommodations—distinct types of support depending on their disabilities—that are procedural and age-appropriate. This may include access to sign-language interpretation, the presence of someone to facilitate communication (“special educator”), the use of simple language, and the option to file reports in braille.

However, this support is often not available in India, even though the 2013 amendments and the Protection of Children from Sexual Offences Act, 2012, (POCSO) mandate these provisions. Most police do not have the training or expert support to handle such cases.

In Delhi, Pooja, an 11-year-old girl with an intellectual disability, was taken to the police station in August 2013 by her father after she was allegedly raped by a neighbor. The police

brought in a sign language interpreter to assist the interviewee, but Pooja cannot speak due to a neurological condition; she is not deaf and has no knowledge of sign language. Though the investigating police officer tried to do the right thing by calling a support person, lacking access to proper guidance from a special educator, he misinterpreted Pooja's intellectual disability.

In some cases, Human Rights Watch found that women and girls were excluded from accommodations on the basis of their inability to certify a disability. Even in cases where women and girls had visible physical disabilities or identified their disabilities, police failed to include specific details in the First Information Report (FIR), the document that sets the criminal justice process in motion. Lack of documentation in police reports precludes women and girls with disabilities from receiving specific need-based support from the police and judiciary.

Maneka, a 15-year-old girl from Delhi with both an intellectual and physical disability, reported being raped by two men from her neighborhood in October 2015. Although Maneka's family conveyed her age and disabilities to the police, the FIR noted her age as over 18 and did not include her disability. As a result, she did not receive protections under POCSO or the 2013 amendments. The police's failure to document Maneka's intellectual and physical disabilities also undermined the process of evidence collection.

Maneka's lawyer said that when she gave her statement to police, the investigating officer did not provide her with accommodations as required by law, such as support from a special educator. Maneka's lawyer also said that the police failure to video Maneka's statement—an accommodation to reduce trauma from repeated testimony—has added to the challenges in litigating her case.

Debashree Sabuj, deputy police commissioner for women in West Bengal, attributed many of these shortcomings to lack of training and information among police officers:

We have had no training. When we meet a disabled woman, we may not know how to speak to her properly. The police are not cruel. In most cases the police are simply ignorant. It is not that we don't want to believe them, but we also worry that if we make a mistake, the wrong person will be

punished. The police need education and we need to be sensitized on how to handle these cases.

Problems Accessing Medical Care

In cases of sexual violence, immediate medical attention and examination can both identify urgent medical needs and facilitate timely evidence collection. In 2014, India's Ministry of Health and Family Welfare issued *Guidelines and Protocols for Medico-Legal Care for Victims/Survivors of Sexual Violence*, which include requirements for the medical examination of women and girls with disabilities such as providing accommodations like a special educator to take consent and medical histories.

The failure of many medical professionals to adequately explain medical tests and procedures and ensure that women and girls with disabilities are comfortable with the process may add to the trauma of sexual violence. For instance, Soumya said that her daughter Maneka, whose case is discussed above, was isolated from her family in the hospital and subjected to tests she did not understand.

They took Maneka in for the examination all alone—she was scared. No one explained to her or to me what tests they were doing. They gave her medicine but I don't know what medicine it was. I helped Maneka to tie her pajamas [pants] afterward. I asked her about the tests, but she could not tell me. I am not literate so I could not read the papers.

Navigating the Judicial Process

The judicial process in India is slow and traumatic for many victims of crimes. However, unfamiliar and stressful court environments present a heightened challenge for women and girls with disabilities, especially during protracted legal cases. Lack of information among women and girls with disabilities and their families about their legal rights, including the right to legal representation, prevents many from advocating for their needs.

Lokapriya Kanungo, the National Advocacy Coordinator at Shanta Memorial Rehabilitation Centre, described the case of Karuna, a woman with low vision from Bhubaneswar, Odisha, who reported being raped in June 2013:

The police did not help Karuna get legal aid. The staff of the [residential shelter home] helped her to find a lawyer, but the lawyer they found was not free of cost. It has been tough for her to continue with the lawyer. This has affected the progress of the case.

Since August 2013, Kanchana, who has an intellectual disability, and her mother Diya, have been to court five times. The court proceedings were not adequately explained to Kanchana. Diya recounted a simple misunderstanding when Kanchana was asked to wait in the plaintiff's witness box in the courtroom, which proved deeply traumatic for her.

When they led Kanchana away from me, she cried and screamed. The police explained to me that she would be able to see me and that they would bring her straight back to my lap. She couldn't understand. She was terrified and believed she was being taken to a lock-up.

Difficulties Obtaining Compensation

Indian law and policies require that all state governments facilitate compensation, including interim relief in cases where no trial takes place because the offender cannot be traced or identified.

However, Human Rights Watch found that even in cases of extreme violence, trauma and economic hardship resulting from childbirth, women and girls with disabilities had difficulties in securing compensation from the court or the Criminal Injuries Compensation Board. Local activists said that there is no set standard, and amounts are often determined arbitrarily, vary between states, and can be driven by media publicity.

In 2014, in a remote village in Hooghly district, West Bengal, Noori, a 23-year-old Muslim woman with cerebral palsy and other disabilities—including the inability to speak or walk without a stick—was gang raped by three neighbors until she lost consciousness. Noori applied for compensation to cover her medical expenses, but more than three years later had yet to be awarded compensation.

Even when compensation has been awarded, the money may not reach the person in need. In August 2014, in a village in Herbertpur, Uttarakhand, Razia, a 13-year old girl with an

intellectual disability and difficulties speaking, was raped by her younger brother's 17-year-old tutor. With the support of the Latika Roy Foundation, an organization working with children and adults with developmental and other disabilities, Razia and her family pursued justice via the courts—and won. Razia was granted compensation of two lakh rupees (US \$3,100). However, at the time of writing, the family had yet to receive the money.

In 2013, the central government established the Nirbhaya Fund for schemes aimed at “prevention, protection and rehabilitation” of survivors of sexual violence. No specific fund for persons with disabilities exists in India and women with disabilities are not explicitly mentioned in the Nirbhaya Fund. Meenakshi Balasubramaniam, from Equals—Centre for Promotion of Social Justice, said:

In the Nirbhaya Fund they should have put some amount aside for women with disabilities because accessibility and reasonable accommodation involves costs, but these aspects of access to justice for women and girls with disabilities have not been taken into consideration.

Compensation is particularly important for women and girls with disabilities and their families, especially those who live in rural areas or are from marginalized communities. In 2014, Diya and Kanchana applied for compensation under a West Bengal scheme. After Kanchana decided to carry her son to term, Diya had no choice but to leave her work. Now, as the primary caregiver for her daughter and grandson, she cannot leave home. Four years later, the case has been closed and their application for compensation is still pending.

India's political and administrative leadership has repeatedly expressed concern over sexual violence and has said it is committed to reforms. The government has also taken pride in its efforts to protect the rights of persons with disabilities.

In 2007, India ratified the Convention on the Rights of Persons with Disabilities (CRPD). Under the treaty, states are obligated to “ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role

as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”

In December 2016, India’s parliament adopted the Rights of Persons with Disabilities Act, which protects all persons with disabilities from abuse, violence and exploitation, and articulates specific measures to be taken by appropriate government officials, executive magistrates and the police.

While these are important steps, much more remains to be done to reform the criminal justice system and ensure equal access to justice, including through accommodations, for women and girls with disabilities who are survivors of sexual violence. These cases should no longer remain in the shadows.

Key Recommendations

The key recommendations below focus on the unique needs of women and girls with disabilities who experience sexual violence. They should be implemented alongside those in Human Rights Watch’s report “*Everyone Blames Me*”: *Barriers to Justice and Support Services for Sexual Assault Survivors in India*.

India’s Central and State Governments should:

- Properly implement laws and policies to protect rights in cases of sexual violence against women and girls with disabilities.
- Ensure that police, judicial officers, medical officers and judges receive adequate training in the rights of survivors of sexual violence, including women and girls with disabilities. Police and the courts should have access to “special educators,” who can identify disability accurately and provide support or other accommodations.
- Adopt and implement the Ministry of Health and Family Welfare *Guidelines and Protocols for Medico-Legal Care for Survivors/ Victims of Sexual Violence* across all states and jurisdictions. Ensure that all medical professionals are trained in accordance with these guidelines.
- Collect and disaggregate data on sexual and gender-based violence on the basis of gender, disability and age to ensure adequate services and inform government policies and programs to better address the needs of women and girls with disabilities.
- Formulate a uniform scheme across all Indian states to provide compensation to victims of sexual violence, including women and girls with disabilities. Compensation awarded should consider the additional costs incurred and urgent needs of victims with disabilities.

Methodology

Between January 2016 and December 2017, Human Rights Watch investigated the implementation of the Criminal Law (Amendment) Act, 2013, and the Protection of Children from Sexual Offences Act, 2012, in cases of rape and gang rape perpetrated against women and girls with disabilities. Our general assessment on the implementation of the 2013 amendments is featured in the November 2017 report “*Everyone Blames Me*”: *Barriers to Justice and Support Services for Sexual Assault Survivors in India*.¹⁰

For this report, we investigated 17 rape and gang-rape cases from eight states in India, including Chhattisgarh, Delhi, Karnataka, Maharashtra, Odisha, Tamil Nadu, Uttarakhand, and West Bengal. Locations were chosen based on the presence of strong local partners and access to information about these cases. While the scale and geographic scope of this research are not comprehensive, the cases demonstrate a range of challenges faced by women and girls with disabilities that we have reason to believe are indicative of challenges faced by women and girls with disabilities based upon extensive interviews with disability rights activists and a media survey of cases in English-language newspapers in India, conducted between January 2016 and August 2017.

The cases, which included eight girls and nine women, live with a spectrum of disabilities, including psychosocial disability; physical disability; blindness or low vision; hearing and speech disabilities; cerebral palsy, leading to multiple disabilities (cognitive and locomotor); intellectual disability; epilepsy, and in one case, a girl with a severe neurological condition leading to multiple disabilities (cognitive and speech disabilities).

All cases documented for this report took place after the passage of the Protection of Children from Sexual Offences Act, 2012 (POCSO and the Criminal Law (Amendment) Act, 2013 (2013 amendments), but before the Rights of Persons with Disabilities Act, 2016. Accordingly, in the cases covered in this report women and girls with disabilities were entitled to protection under both POCSO and the 2013 amendments. They were not, however, entitled to protection under the Rights of Persons with Disabilities Act, 2016.

¹⁰ Human Rights Watch, “*Everyone Blames Me*”: *Barriers to Justice and Support Services for Sexual Assault Survivors in India*, November 8, 2017, <https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>.

In order to avoid traumatizing sexual violence survivors, Human Rights Watch investigated cases by first seeking information from social workers, lawyers, advocates and government stakeholders before engaging survivors and their families. We conducted interviews with 111 people including sexual violence survivors, family members, and lawyers, including a public prosecutor. We also met officials from mental health institutions and shelter facilities, police, government officials, special educators and disability rights activists.¹¹

In five cases, we conducted direct interviews with women survivors of rape. These interviews were only conducted in instances when women wished to tell their stories. We did not conduct interviews directly with any children who were raped.

Interviews were conducted in English, Hindi, Bengali, Odiya, Tamil, and Kannada. Interviews for this report were conducted in person, by phone and email, with the medium of each interview given in citations. All interviews with women with disabilities who had been raped were conducted by women researchers and interpreters. Support persons, including social workers, were present as appropriate.

All interviewees participated voluntarily and without compensation. In order to protect the privacy of all women and girls whose experiences are described in this report, we have taken measures to exclude all names and identifying information. In some cases, we did not use the real name of the lawyers to protect client confidentiality.

Where possible, we also collected government documents, medical records, correspondence between survivors (and their family members) and government

¹¹ These 111 interviews included interviews with five women who were raped; nine family members of six survivors; seven lawyers, including two lawyers practicing at the Supreme Court; one Public Prosecutor from Odisha; one judge from Odisha; two crisis center administrators in-charge and one handling administrator from three one-stop crisis centers in Odisha and Maharashtra; one superintendent of a mental hospital; two superintendents of two women's shelter homes from Odisha; two Special Cell for Women and Children coordinators in Maharashtra; two special educators and one sign language interpreter with experience supporting testimony of women and girls with disabilities in rape cases; and 43 disability rights activists, including 14 women with disabilities who were survivors of violence or discrimination. We also interviewed seven police officials including one police commissioner, Crime branch from Odisha; an inspector general of police from Uttarakhand; the Deputy Police Commissioner for Women in West Bengal, two Inspectors General from the crime branches in Odisha and Maharashtra, and two police officers from Kolkata, West Bengal. Finally, we interviewed three central and 10 state government officials, including six protection officers in Karnataka; the Secretary of Health from the Department of Health and Family Welfare, West Bengal; a state commissioner for persons with disabilities, Odisha; the chairperson, one senior research officer, and one member of the National Commission for Women; one member the District Legal Services Authorities from Karnataka; and one Chairperson, Child Welfare Committee, Tamil Nadu. In many cases, we interviewed respondents more than once to update research as cases progressed.

institutions and final judgments. We were able to collect supporting documents for eight cases. These materials were collected with permission from the survivors and are on file with Human Rights Watch.

Background and Legal Framework

Persons with Disabilities in India

Estimates of the size of the population with disabilities in India differ greatly. India's Census 2011 reports that 2.21 percent of India's population—or 26.8 million people live with disabilities.¹² The World Health Organization and World Bank report that 15 percent of the global population lives with some form of disability; 12 percent of males and 19 percent of females.¹³ This discrepancy between Indian and international estimates can be attributed to discordant definitions of disability, lack of awareness and stigma—especially for women and girls—which results in under-reporting.¹⁴

Under-representation in Indian census data contributes to exclusion from other government data sources.¹⁵ The National Family Health Survey and the National Crime Records Bureau do not include disaggregated data for persons with disabilities.

In 2014, the United Nations Special Rapporteur on Violence against Women, Rashida Manjoo, recommended disaggregated data collection not only on disability, but also sex,

¹² Office of the Registrar General & Census Commissioner, India, "Presentation on Disability, Census of India 2011: Data on Disability," December 27, 2013, <http://censusindia.gov.in/> (accessed January 6, 2017); B Sivakumar, "Disabled population up by 22.4% in 2001-11," *Times of India*, December 29, 2013, <http://timesofindia.indiatimes.com/india/Disabled-population-up-by-22-4-in-2001-11/articleshow/28072371.cms> (accessed July 3, 2016).

¹³ World Health Organization and World Bank, "World Report on Disability 2011," http://www.who.int/disabilities/world_report/2011/report.pdf; Punarbhava, "Census of India: 2011 Data on Disability," <http://punarbhava.in/index.php/disability-register/census-2011-disability-data.html>.

¹⁴ Sachin P. Mampatta, "India's missing disabled population," *Livemint*, September 16, 2015, <http://www.livemint.com/Opinion/1rx8tSYGwHBoZRsvdNFIBP/Indias-missing-disabled-population.html> (accessed July 3, 2016).

¹⁵ WHO World Report on Disability, 2011, details the challenges associated with national census and survey-based approaches to measuring disability and provides detailed guidelines on how to improve census outcomes. "Censuses cover entire populations, occur at long intervals, and by their nature can incorporate only a few disability-relevant questions. While considerable socioeconomic data, such as employment rates and marital status, are available from censuses, they can provide only limited information about participation." The report highlights the potential of surveys if used well: "Surveys have the possibility of providing richer information through more comprehensive questions including on institutionalized populations. [F]or example, survey questions identify people with disabilities for impairments in body function and structure, but also increasingly for activities, participation, and environmental factors. Some surveys also provide information on the origins of impairments, the degree of assistance provided, service accessibility, and unmet needs." World Health Organization and World Bank, "World Report on Disability 2011," http://www.who.int/disabilities/world_report/2011/report.pdf, p. 22.

age, caste, religion, language and other relevant criteria.¹⁶ The lacuna in counting persons with disabilities presents a significant hurdle to providing adequate services and a lack of attention to their needs in government policies and programs—including those aimed at supporting access to justice in cases of sexual violence.

Sexual Violence against Women and Girls with Disabilities

While there is no national disaggregated data on violence against women and girls with disabilities, senior government officials recognize this population faces heightened risk of violence, including sexual violence.¹⁷ In December 2015, based on her consultations with disability advocates and experts, then-chairwoman of the National Commission for Women, Lalitha Kumaramangalam, said: “Regardless of the type of disability, incidents of rape with disabled women are much higher than with other women.”¹⁸

India has a dearth of population-based prevalence studies on sexual violence, especially those focused on women and girls with disabilities. However, studies by academic and nongovernmental organizations provide some insight. For example, a 2004 survey across 12 districts and 729 respondents in Odisha state found that nearly all of the women and girls with disabilities surveyed were beaten at home, and 25 percent of women with intellectual disabilities had been raped.¹⁹ A 2011 study found that 21 percent of the 314 women with disabilities surveyed experienced emotional, physical or sexual violence from someone other than their intimate partner.²⁰

¹⁶ UN Human Rights Council, “Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo,” April 1, 2014, A/HRC/26/38/Add.1., http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-38-Add1_en.doc (March 13, 2018).

¹⁷ Some states, however, have taken measures to maintain disaggregated data. The Maharashtra police, for instance, reported that between January and October 2015, 76 women and girls with disabilities (including those characterized as “mentally challenged” and “handicapped”) were victims of rape in Maharashtra alone. Maharashtra Police, Presentation on “Measures Taken to Prevent Crime Against Women,” on file with Human Rights Watch.

¹⁸ “One of the biggest challenges for disabled women is access: Lalitha Kumaramangalam,” Livemint, <http://www.livemint.com/Politics/oWeOfotABR6efNnuNF8nPJ/One-of-the-biggest-challenges-for-disabled-women-is-access.html> (accessed December 16, 2017).

¹⁹ S. Mohapatra and M. Mohanty, “Abuse and Activity Limitation: A Study on Domestic Violence Against Disabled Women in Odisha,” 2004, <http://swabhiman.org/userfiles/file/Abuse%20and%20Activity%20Limitation%20Study.pdf> (accessed July 3, 2016).

²⁰ CREA, “Count Me In! Violence Against Disabled, Lesbian, and Sex-working Women in Bangladesh, India, and Nepal,” 2011, <http://www.creaworld.org/sites/default/files/The%20Count%20Me%20In%21%20Research%20Report.pdf> (accessed July 3, 2016). Figures on the prevalence of violence against women with disabilities reflect qualitative and quantitative surveys conducted with women with disabilities. Researchers contacted 432 women with disabilities, and 317 participated in the study. Of the 317 respondents, 243 lived in Mumbai, 72 in adjacent Thane, and two in Navi Mumbai.

Rights of Women and Girls with Disabilities in India

Indian and international law protect the rights of women and girls with disabilities in cases of sexual violence.

National Laws

Since 2012, India's legal framework for addressing sexual violence evolved rapidly and significantly. These changes have included the 2013 amendments to India's penal code, the substantive criminal law governing offenses, and the passage of the Protection of Children from Sexual Offences Act, 2012 (POCSO), India's first law that focuses exclusively on sexual offenses against those below age 18.²¹

In December 2016, India enacted the Rights of Persons with Disabilities Act, 2016,²² which marks a significant shift from India's Persons with Disabilities Act, 1995. The 2016 act redefines disabilities under Indian law to more closely align with the Convention on the Rights of Persons with Disabilities (CRPD), which India ratified in 2007.²³

The Rights of Persons with Disabilities Act provides measures to protect all persons with disabilities from all forms of abuse, violence and exploitation, and articulates specific measures for appropriate governments, executive magistrates, and the police to take. Together, these laws introduced important new protections for women and girls with disabilities to aid their access to justice, especially in cases of sexual violence.

Accommodations under the Criminal Law Amendments, 2013

India's 2013 criminal law amendments provide accommodations to support women with disabilities to access the criminal justice system.²⁴ These include:

²¹ In 2013, India's Penal Code was amended, with the aim of improving access to justice. For a detailed discussion of these provisions, please see Human Rights Watch, *"Everyone Blames Me,"* Section VI: National and International Legal Framework: <https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>.

²² Rights of Persons with Disabilities Act, 2016, no. 49 of 2016.

²³ Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, Annex I, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008.

²⁴ These provisions resulted from sustained advocacy from Indian and international activists and organizations working on disability rights. Following the December 2012 gang rape perpetrated against Jyoti Pandey in Delhi, which resulted in fatal injuries, the national government formed a three-member commission headed by former Indian Supreme Court Chief Justice Jagdish Sharan Verma. Indian and international activists and organizations working on disability rights submitted information to the committee on the need to address sexual violence against women and girls with disabilities. These

- The right to record their statement with police in the safety of their home or a place of their choice;²⁵
- The right to have their statements to police and examinations videotaped;²⁶
- The right to assistance by a “special educator” or interpreter when the complaint is recorded and during trial;²⁷
- Exemption from the need to repeat their statement during trial, subject to cross-examination.²⁸

The 2013 amendments also seek to support women with disabilities in identifying arrested suspects during the “test identification parade,” a process previously based on visual identification alone. If the witness is a person with a disability, a judicial magistrate will oversee the procedure to ensure the witness is supported in identifying the accused with a means they find comfortable, by the sound of their voice or touch, for example.²⁹ The law also provides that this procedure should be videotaped for evidence purposes.³⁰

submissions reflected protections for women and girls with disabilities set forth in the CRPD, CEDAW, and POCSO. “Delhi gang rape case: Parliament session decision after Verma Committee report, says P Chidambaram,” *The Economic Times*, December 31, 2012, http://articles.economictimes.indiatimes.com/2012-12-31/news/36079350_1_special-session-parliament-p-chidambaram (accessed July 4, 2016); Justice J.S. Verma, “Report of the Committee on Amendments to Criminal Law,” January 3, 2013, <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>, (accessed on August 14, 2017), para. 5, p. 22, (noting that the committee took an analysis of a wide range of recommendations, including from specialists on disability rights). Among these submissions, on January 5, 2013, Human Rights Watch submitted a letter to Justice Verma that called for targeted measures to meet the needs of women with disabilities and other marginalized groups. Letter from Human Rights Watch, “India: HRW Letter to Justice Verma, Chair of the Commission on reforms on sexual assault and Former Chief Justice of the Supreme Court of India,” January 5, 2015, <https://www.hrw.org/news/2013/01/05/india-hrw-letter-justice-verma-chair-commission-reforms-sexual-assault-and-former-shampa-sengupta>, Shampa Sengupta, “Little has changed for modern day Subhasini,” *The Statesman*, December 2, 2013, <https://www.thestatesman.com/opinion/little-has-changed-for-modern-day-subhashini-27969.html> (accessed March 11, 2018).

²⁵ 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).

²⁶ 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).

²⁷ Ibid.

²⁸ A statement recorded of a person who is temporarily or permanently mentally or physically disabled shall be considered a statement in lieu of examination-in-chief (direct examination). The person giving the statement can be cross-examined on their statement without the need for repeating their statement during the trial. See section 137 of the Indian Evidence Act (Amendment to the Code of Criminal Procedure, 1973 by The Criminal Law Amendment Act, 2013, No. 13 of 23 (inserting section 164(5A)(b) CrPC).

²⁹ Amendment to the Code of Criminal Procedure, 1973 by The Criminal Law Amendment Act, 2013, No. 13 of 23 (inserting proviso to 54A CrPC). For instance, the Supreme Court of India has held that a voice sample can be used in identification by means of a voice identification parade under section 54A of the Code or by some other person familiar with the voice of the accused. (Ritesh Sinha v. Uttar Pradesh, Supreme Court of India, JT 2012 (12) SC 258, December 7, 2012).

³⁰ Amendment to the Code of Criminal Procedure, 1973 by The Criminal Law Amendment Act, 2013, No. 13 of 23 (inserting proviso (a) to Section 154(1) CrPC).

While these legal provisions are major steps, gaps in the protection of women with disabilities remain. The 2013 Amendments do not incorporate adequate provisions for counseling facilities and rehabilitation for women with disabilities; training of law enforcement officials and judges to address the particular needs of women and girls with disabilities; and disaggregated data collection by both disability and gender.³¹

Accommodations under the Protection of Children from Sexual Offences Act, 2012

The POCSO introduced a range of child-friendly procedures and Special Courts to try child sexual abuse,³² accommodations for all children on the basis of their age, and specific accommodations for children with disabilities. All children are entitled to give their statement in the presence of an interpreter or translator.³³

If a child has a disability, the Special Court may have the assistance of a special educator, any person familiar with the manner of communication of the child, or an expert in that field, to record the statement and evidence of the child.³⁴ Finally, for all children, including children with disabilities, POCSO requires police officers to get statements recorded by a Judicial Magistrate under Criminal Procedure Code section 154(c).³⁵

Protections under the Rights of Persons with Disabilities Act, 2016

The 2016 Rights of Persons with Disabilities Act marks a significant shift from the Persons with Disabilities Act, 1995. More closely in line with the CRPD, the legislation defines persons with disabilities to include 21 “impairments,” known as “scheduled disabilities,” that are certifiable and eligible for various entitlements under the law. This is a significant increase from the seven “impairments” listed under the 1995 legislation.³⁶

³¹ Women Enabled, “A year after the Delhi gang rape, what has changed for women and girls with disabilities?” December 16, 2013, <http://www.womenenabled.org/newsarchive.html> (accessed July 3, 2016).

³² See Human Rights Watch, “*Everyone Blames Me*,” <https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>.

³³ Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, section 26(3)).

³⁴ *Ibid.*, section 26(3)) and section 38(2).

³⁵ Amendment to the Code of Criminal Procedure, 1973 by The Criminal Law Amendment Act, 2013, No. 13 of 23 (inserting proviso (c) to Section 154 (3) CrPC); Protection of Children from Sexual Offences Rules, 2012, G.S.R 823(E), Rule 4(2)(a) (noting that FIRs should be recorded and registered under the provisions of Section 154 of the Code of Criminal Procedure, 1973).

³⁶ Rights of Persons with Disabilities Act, 2016, no. 49 of 2016, Schedule, p. 33-35.

Addressing sexual violence against women and girls with disabilities, the 2016 law prescribes imprisonment and fines for anyone who would “outrage the modesty of a woman with a disability.” It also protects all persons with disabilities from all forms of abuse, violence and exploitation, with specific measures to be taken by appropriate governments, executive magistrates and the police.

These measures include establishing procedures for reporting violence against persons with disabilities, creating public awareness, and ensuring that persons with disabilities have the protection, free legal aid, and connections with disabled persons organizations that they need to seek relief.³⁷

Section 7 of the 2016 act expressly authorizes the executive magistrate with jurisdiction to receive complaints of abuse, violence, or exploitation perpetrated against persons with disabilities. Upon receiving such information, the executive magistrate is required to take immediate steps to stop or prevent the abuse, including passing protection orders, authorizing police or a local disabled persons organization to provide for safe custody or rehabilitation; providing maintenance; and facilitating protective custody if the person whose safety is at risk wants it.

India’s Obligations under International Law

India is party to the Convention on the Rights of Persons with Disabilities (CRPD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), International Covenant on Economic, Social, and Cultural Rights (ICESCR), and International Covenant on Civil and Political Rights (ICCPR), among others.

Convention on the Rights of Persons with Disabilities

The CRPD contains provisions related to equal access to justice, freedom from torture and other ill-treatment, and freedom from exploitation, violence or abuse.³⁸ Article 13 calls upon states to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the:

³⁷ Rights of Persons with Disabilities Act, 2016, no. 49 of 2016, Section 7.

³⁸ CRPD.

...provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.³⁹

Article 15 obligates states to “take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”⁴⁰ Article 16 requires states to take all appropriate measures to protect persons with disabilities from all forms of exploitation, violence and abuse, including by providing information on how to avoid, recognize and report instances of exploitation, violence and abuse.⁴¹

The UN Committee on the Rights of Persons with Disabilities, in its August 2016 General Comment on women with disabilities, addressed the challenges in accessing justice:

Women with disabilities face barriers to accessing justice, including with regard to exploitation, violence and abuse, owing to harmful stereotypes, discrimination and lack of procedural and reasonable accommodations, which can lead to their credibility being doubted and their accusations being dismissed. Negative attitudes in the implementation of procedures may intimidate victims or discourage them from pursuing justice. Complicated or degrading reporting procedures, the referral of victims to social services rather than the provision of legal remedies, dismissive attitudes by the police or other law enforcement agencies are examples of such attitudes. This could lead to impunity and to the invisibility of the issue, which in turn could result in violence lasting for extended periods of time. Women with disabilities may also fear reporting violence, exploitation or abuse because they are concerned that they may lose the support required from caregivers.⁴²

³⁹ Ibid.

⁴⁰ Ibid., art. 15.

⁴¹ CRPD.

⁴² UN Committee on the Rights of Persons with Disabilities, General Comment no. 3, Art. 6: Women and girls with disabilities, U.N. Doc CRPD/C/GC/3 (2016), para. 52.

Convention on the Elimination of All Forms of Discrimination against Women

The Declaration on the Elimination of Violence against Women, adopted by the UN General Assembly in 1993 to address violence against women, provides in article 4(c) that states should pursue by all appropriate means and without delay, a policy of eliminating violence against women and, to this end, should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons.⁴³

While not specific to violence against women and girls with disabilities, the CEDAW Committee's Recommendation No. 18 calls upon states to provide detailed information on the status of women with disabilities in their periodic reports, as well as special measures to ensure that they can participate in all areas of social and cultural life.

Recommendation No. 19, which is also not specific to women and girls with disabilities, calls for states to take appropriate and effective measures to overcome all forms of gender-based violence, including gender-sensitivity training for judicial and law enforcement officers; effective complaints procedures and remedies, including compensation; and reporting on legal, preventive and protective steps taken to fight violence against women.⁴⁴

In 2014, the CEDAW Committee, in its concluding observations on India's fourth and fifth periodic reports, recommended that the government strengthen police capacity to protect women and girls against violence and ensure that perpetrators are held accountable. The committee also recommended the government adopt standard procedures for the police in each state on gender-sensitive investigations and treatment of victims and of witnesses, and to ensure that First Information Reports (FIR) are duly filed.⁴⁵

⁴³ UN Declaration on the Elimination of Violence against Women, adopted on December 20, 1993, UN Doc A/RES/48/104, <http://www.un.org/documents/ga/res/48/a48r104.htm> (accessed March 1, 2017).

⁴⁴ UN Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation no. 18 adopted at the Tenth Session, 1991 (contained in Document A/46/38), 1991, A/46/38, <http://www.refworld.org/docid/453882a322.html> (accessed 4 November 2016); CEDAW, General Recommendations nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38). 1992, A/47/38, <http://www.refworld.org/docid/453882a422.html> (accessed 4 November 2016).

⁴⁵ CEDAW, "Concluding observations on the combined fourth and fifth periodic reports of India," July 18, 2014, CEDAW/C/INC/CO/4-5 http://cedawsouthasia.org/wp-content/uploads/2010/12/CEDAW_C_IND_CO_4-5_17678_E.pdf (accessed March 2, 2017).

Convention on the Rights of the Child

Under the CRC, states should prohibit discrimination on the grounds of disability, should undertake to protect children from all forms of sexual exploitation and sexual abuse,⁴⁶ and to take all appropriate measures to promote physical and psychological recovery and social reintegration of any child who has been abused (article 39).⁴⁷

In 2014, the Committee on the Rights of the Child, in its concluding observations on the consolidated third and fourth periodic reports of India, recommended that the government ensure that children with disabilities have access to basic services and enjoy their rights under the CRC. To this end, the committee recommended that India develop a national plan of action for children with disabilities that integrates all provisions of the convention, as well as indicators to measure outcomes and ensure effective coordination among relevant ministries for its implementation.⁴⁸

International Covenant on Economic, Social, and Cultural Rights

Article 12 of the ICESCR guarantees the right to the highest attainable standard of physical health, including sexual and reproductive health, and mental health. In its authoritative interpretation of article 12, the Committee on Economic, Social and Cultural Rights, which monitors state adherence to the treaty, said a state's obligation to protect women's rights includes health in the context of gender-based violence.⁴⁹ Health services—preventive, curative, and rehabilitative—should be physically and economically accessible.⁵⁰

⁴⁶ Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (no. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990, art. 34.

⁴⁷ *Ibid.*, art. 39. The principle of non-discrimination is articulated in art. 2 of the CRC, which expressly prohibits discrimination on the grounds of disability: "States parties shall respect and ensure the rights set forth in the present Convention to each child ...without discrimination of any kind, irrespective of the child's...disability...or other status."

⁴⁸ Committee on the Rights of the Child, "Concluding observations on the consolidated third and fourth periodic reports of India," June 13, 2014, CRC/C/IND/CO/3-4, http://www.indianet.nl/pdf/CRC_CO_India_140613.pdf (accessed October 7, 2017).

⁴⁹ Committee on Economic, Social and Cultural Rights, "The right to the highest attainable standard of health," General Comment 14, Twenty-second Session, 2000, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 (1994), para. 35, <http://www.refworld.org/pdfid/4538838do.pdf> (accessed on October 7, 2017).

⁵⁰ *Ibid.*

International Covenant on Civil and Political Rights

Article 7 of the ICCPR—in line with article 5 of the Universal Declaration of Human Rights—states that no person can be subjected to “cruel, inhuman or degrading treatment.”⁵¹ The UN Human Rights Committee, the ICCPR’s monitoring body, in its authoritative commentary on article 7, noted the “aim of the provisions of article 7 ... is to protect both the dignity and the physical and mental integrity of the individual,” including in medical institutions.⁵²

⁵¹ Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), art. 5; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1996, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by India on April 10, 1979, art. 7.

⁵² UN Human Rights Committee, General Comment No. 20, Replaces General Comment No. 7 concerning prohibition of torture and cruel treatment or punishment (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 (1994), paras. 2 and 5.

Barriers in the Criminal Justice System

Women and girls with disabilities, like others who experience sexual violence in India, face numerous barriers to accessing justice. These include stigma and victim-blaming, challenges in reporting, and poor access to support services, including timely medical treatment, counseling, and legal aid.⁵³

Human Rights Watch found that these barriers are often exacerbated for women and girls with disabilities due to a lack of accommodations, and failure to account for disabilities by police, medical and court professionals, even when families, their lawyers, and engaged organizations identify disabilities and corresponding needs.

For some women and girls with disabilities, reasonable accommodations—changes in ordinary procedures or practices to meet the needs of a particular person—are key in reporting sexual violence. In 15 out of 17 cases that Human Rights Watch documented, provisions requiring police officers and court officials to provide accommodations were simply not followed, even in cases in which women and girls had severe and visible disabilities and injuries that they reported to the police from the start.

Challenges Reporting Sexual Violence

Reporting sexual violence and seeking justice is not an easy decision for women and girls and their families. These challenges are exacerbated for women and girls with disabilities who experience unique stigmatization related to their disability, which can lead to social isolation and lack of access to information on legal rights and protections.

Stigma and Victim-Blaming

Stigma and victim-blaming against women and girls with disabilities may manifest in damaging stereotypes of hyper-sexuality or asexuality that have implications for their ability to access justice in cases of sexual violence.

⁵³ For an overall account of the challenges faced by women and girls who face sexual violence in India, see Human Rights Watch, “*Everyone Blames Me*,” November 8, 2017, <https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>.

For example, women with disabilities are often considered asexual, devoid of sexual desires, and unlikely to be considered sexually attractive.⁵⁴ They are often referred to as children, even as adults and despite having gone through puberty. Alternately, women with disabilities may be thought to be hypersexual and eager to engage in sexual activity.

These misconceptions about the sexuality of women with disabilities, coupled with the stigma related to having a disability, make it especially hard for women and girls with disabilities to get family and community support for justice.

Shreya Rani Dei, a field worker with Shanta Memorial Rehabilitation Centre (SMRC), an NGO working on disability rights in Odisha, described a recent case where a girl with intellectual disability was raped and “it was enough for the perpetrator to say he was sorry. The villagers took no further action since she is intellectually disabled and is therefore considered to have less worth than other women.”⁵⁵

In 2014, in a remote village in Hooghly District, West Bengal, Noori, a 23-year-old Muslim woman with cerebral palsy and multiple disabilities—including the inability to speak or walk without a stick—reported that three neighbors raped her until she lost consciousness. Shampa Sengupta, director of the Sruti Disability Rights Centre, said that the community response to the crime reflected the stigma associated with disability:

The villagers took sides. They felt that ‘productive’ men in their prime were jailed due to an ‘unproductive’ woman who cannot even walk or talk properly.⁵⁶

Stigma may lead families to conceal sexual violence. In August 2014, in a village in Herbertpur, Uttarakhand, Razia, a 13-year-old girl with an intellectual disability and difficulties speaking, was raped by her brother’s tutor. Shabana, Razia’s mother,

⁵⁴ Kalpana Sharma, “The Other Half- Different and Able,” *The Hindu*, July 11, 2011, http://www.thehindu.com/opinion/columns/Kalpana_Sharma/the-other-half-different-and-able/article1980786.ece (accessed July 3, 2016).

⁵⁵ Human Rights Watch interview with Shreya Rani Dei, Bhubaneswar, Odisha, September 20, 2016.

⁵⁶ Memorandum submitted to the National Commission for Women on September 18, 2015 by the National Platform for the Rights of the Disabled, <http://www.kractivist.org/press-release-sexual-assaults-on-disabled-women-memo-to-ncw-vaw/> (accessed March 11, 2018); Human Rights Watch telephone interview with Shampa Sengupta, director, Shrutu Disability Rights Centre, August 18, 2016.

supported her daughter to fight for justice and the family ultimately won the court case. Shabana explained her initial decision to conceal her daughter's name:

When Razia was dropped home from her grandmother's house by the tutor, she was bleeding heavily. We rushed her to the local hospital and they said that she had been hurt very badly. We were sent to Dehradun to the big government hospital. We were scared and worried. At the hospital, we gave a false name for our daughter and even for my husband. We were scared that if her name was given, and people knew she had [been raped], it would lead to our name going bad in the community. We didn't know that such a thing could hamper the case going forward. We worked with a lawyer to clear this up when our case came to court.⁵⁷

Though sexual violence is not unique to women and girls with disabilities, they may be more vulnerable to abuse⁵⁸ and have increased difficulty leaving abusive situations since they are more reliant on families and caregivers.⁵⁹

In Delhi,⁶⁰ Odisha,⁶¹ Tamil Nadu⁶² and West Bengal,⁶³ social workers reported that sexual violence against women and girls with disabilities within families is prevalent but legal action is rare.⁶⁴ C. Murukesan, district leader of Tamil Nadu Association for the Rights of all

⁵⁷ Human Rights Watch interview with Shabana, Herbertpur, Uttarakhand, August 4, 2017.

⁵⁸ Social perceptions, including among families and caregivers, that women with disabilities are child-like may also increase risk of abuse. For instance, while sharing rooms among female and male relatives is considered socially unacceptable after puberty, disability rights activist Anita Gai reports that women with disabilities are routinely made to share rooms with male relatives long after it is appropriate to do so, increasing risk of sexual abuse. Ashwaq Masoodi, "Sexual rights of disabled women," *Livemint*, December 3, 2014, <http://www.livemint.com/Politics/FDPpol4lJopXo37spUU1kL/Sexual-rights-of-disabled-women.html> (accessed July 3, 2016).

⁵⁹ Human Rights Watch interview with Meenu Mani, activist with the National Platform for the Rights of the Disabled, Delhi, August 10, 2016; Human Rights Watch group interview with four staff members at Anjali Mental Health Rights Organization, Kolkata, West Bengal, August 4, 2016.

⁶⁰ Human Rights Watch interview with Meenu Mani, activist with the National Platform for the Rights of the Disabled, Delhi, August 10, 2016.

⁶¹ Human Rights Watch interview with Reena Mohanty, activist with Shantha Memorial Rehabilitation Centre, Bhubaneswar, Odisha, September 20, 2016.

⁶² Human Rights Watch telephone interview with C. Murukeshan, July 8, 2016.

⁶³ Human Rights Watch group interview with four staff members at Anjali Mental Health Rights Organization, Kolkata, West Bengal, August 4, 2016.

⁶⁴ These reports are consistent with a 2011 study by CREA. Some respondents said that when they tried to speak to their families about abuse they endured as children, they were made to feel that it was their fault. These experiences, women reported, taught them from an early age that they should not report or attempt to put a stop to abuse. CREA, "Count Me In!

Types of Differently Abled and Caregivers (TARATDAC), illustrated this point with a 2015 case of Preeti, a 15-year-old girl with an intellectual disability and cerebral palsy:

[Preeti] was sexually abused by her brother-in-law. She conceived and gave birth to a child. The parents were not interested in filing an FIR because they did not want to embarrass the son-in-law.⁶⁵

L. Vincent Sundaraj, chair of the Child Welfare Committee in Krishnagiri District, Tamil Nadu, said that stigma relating to physical and mental disabilities restricts people from approaching police in sexual violence cases:

Instead, cases come to us from hospitals when girls come in for medical care. Social workers, journalists and child welfare committees are more often the ones to take cases to the police.⁶⁶

Lack of Access to Information

People throughout India are often not aware of their rights. But even in areas where civil society and government initiatives seek to educate women and girls about their legal rights, this information may not reach those with disabilities due to the lack of information on laws and processes in accessible formats.⁶⁷

In 16 of the 17 cases documented by Human Rights Watch, women and girls with disabilities and their families were not familiar with disability-specific protections under the 2013 amendments or the POCSO Act, 2012. For instance, Nafisa, a woman from Odisha with difficulties hearing and speaking, was 19 when she was raped while attending a tailoring class. She said that at the time of the incident, she did not go to the police because she did not know that sexual violence was a criminal offense:

Violence Against Disabled, Lesbian, and Sex-working Women in Bangladesh, India, and Nepal,” <http://www.creaworld.org/sites/default/files/The%20Count%20Me%20In%21%20Research%20Report.pdf>.

⁶⁵ Human Rights Watch telephone interview with C. Murukeshan, July 8, 2016.

⁶⁶ Human Rights Watch interview with L. Vincent Sundaraj, Krishnagiri District, Tamil Nadu, October 7, 2016.

⁶⁷ Human Rights Watch interview with Meenu Mani, activist with the National Platform for the Rights of the Disabled, Delhi, August 10, 2016; Human Rights Watch interview with Reena Mohanty, activist with Shantha Memorial Rehabilitation Centre, Bhubaneswar, Odisha, September 20, 2016; Human Rights Watch telephone interview with C. Murukeshan, July 8, 2016; Human Rights Watch group interview with 4 staff members at Anjali Mental Health Rights Organization, Kolkata, West Bengal, August 4, 2016.

One day, my teacher was finishing some work on the sewing machine in the veranda and asked me to wait inside the house. I was alone inside and that was when her brother forced himself on me. I did not know that if someone raped me, I could go to the police.⁶⁸

Mansoor Ali, director of the Graham Bell Centre for the Deaf in Hooghly District, West Bengal, explained the importance of providing support to ensure sexual violence is reported:

In rural places where [disabled persons] organizations like ours are not active, families do not go to the police and report when a child has been raped. If they do not know the law and cannot read and write, they do not have the courage to go forward. In these cases, we support women and girls with disabilities to get relief.⁶⁹

Lack of Accommodations

Women and girls with disabilities may experience barriers communicating about sexual violence. India's Ministry of Health and Family Welfare stated that, "they face [challenges] in expressing themselves in a system that does not create an enabling environment to allow for such expression."⁷⁰

In order to address the barriers faced by people with disabilities, national legislation in countries including India has incorporated the concept of "accommodation"—a change in ordinary procedures or practices to meet the needs of a particular person.⁷¹ The UN

⁶⁸ Human Rights Watch interview with Nafisa, Shanta Memorial Rehabilitation Centre (SMRC), Bhubaneswar, Odisha, September 20, 2016.

⁶⁹ Human Rights Watch interview with Mansoor Ali, director of Graham Bell Centre for the Deaf, Hooghly District, West Bengal, August 5, 2016.

⁷⁰ Government of India, Ministry of Health and Family Welfare, Guidelines and Protocols, Medico-Legal Care for Victims/Survivors of Sexual Violence, <http://uphealth.up.nic.in/med-order-14-15/med2/sexual-vil.pdf> (accessed March 11, 2018).

⁷¹ The concept of reasonable accommodation was first applied to the disability context in the United States Rehabilitation Act, 1973. In codifying the concept of reasonable accommodation, states have used a variety of terms including "reasonable accommodation, reasonable adjustments, adaptations or measures, and effective or suitable modifications." UN General Assembly, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, "The Concept of Reasonable Accommodation in Selected National Disability Legislation, Background conference document prepared by the Department of Economic and Social Affairs,"

Department of Economic and Social Affairs has stated that this approach recognizes that “discrimination can arise from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public.”⁷² Widely accepted in the human rights field, reasonable accommodation stands at the core of the Convention on the Rights of Persons with Disabilities.⁷³

For women and girls with disabilities, the accommodations under India’s 2013 criminal law amendments and POCSO may be integral to accessing justice. Mamta Govil, a social worker at the Latika Roy Foundation in Dehradun, said that the organization worked with Razia, the 13-year old girl with an intellectual disability and difficulties speaking, to recount her rape by her brother’s 17-year-old tutor:

Generally, in cases like Razia’s where the child has an intellectual disability and unclear speech, people assume that she will not be able to narrate what happened to her. That is just not true. With Razia, the challenge was even greater given what she had been through—she was in a lot of pain and had just had 24 stitches in her vagina. She was traumatized. But, as we saw with Razia, you need time and you need patience, but it is possible. Our counselor took a number of sessions with Razia. She used creative techniques, like using a doll. Razia was clear and consistent in her account of the horror she faced.⁷⁴

Special educators and interpreters may need to employ different, creative strategies in order to facilitate accounts of sexual violence by women and girls with diverse disabilities. For example, Mehtab Zia Shaikh, vice principal of the Bombay Institute for Deaf and Mute, told Human Rights Watch that she worked with Rekha, a 24-year old deaf woman, who could not read, write or speak sign language. They developed a trust and channel of communication through gestures and repetition, which allowed Rekha to communicate her

Seventh session, New York, January 16-February 3, 2006, A/AC.265/2006/CPR.1, <http://www.un.org/esa/socdev/enable/rights/ahc7bkgrndra.htm> (accessed August 9, 2017).

⁷² Ibid.

⁷³ Under the CRPD, “‘reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” CRPD, art. 2.

⁷⁴ Human Rights Watch interview with Mamta Govil, Dehradun, Uttarakhand, August 20, 2017.

sexual abuse in detail during her trial in 2014.⁷⁵ On February 6, 2018, Rekha received a judgment in her favor. The accused was convicted of wrongfully confining and raping Rekha, He was sentenced to life imprisonment.⁷⁶

The staff at Anjali Mental Health Rights Organization in Kolkata, West Bengal, an organization that works closely with women and girls with psychosocial disabilities, described the importance of accommodations in supporting women and girls with psychosocial disabilities to communicate effectively. Sudeshna Basu, Deputy Director, said:

When we work with women and girls with psychosocial disabilities, there is a process that can help them to communicate. A person whom she knows and trusts can ask questions in a way that she can understand. A stranger who has never met her before may not be able to understand what she is trying to say.⁷⁷

Accommodations may be integral to facilitating access to justice for women and girls with disabilities. However, in 15 of 17 cases that Human Rights Watch documented, provisions requiring police officers and court officials to provide accommodations were simply not followed, even in cases when women and girls had severe and visible disabilities and injuries that they reported to police when cases were first reported.

While POCSO and the 2013 amendments call for police and judicial authorities to employ special educators, the human resources required to implement the law remain lacking. Poonam Natarajan, former chairperson of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities for India's Ministry of Social Justice and Empowerment, said:

The issue is that there are no lists of special educators or support personnel on hand with the police or the courts. When I was heading the National Trust, I was trying to work towards getting special educators

⁷⁵ Human Rights Watch interview with Mehtab Zia Shaikh, vice principal of the Bombay Institute for Deaf and Mute, Mumbai, June 22, 2017.

⁷⁶ Judgment on file with Human Rights Watch.

⁷⁷ Human Rights Watch group interview with Sudeshna Basu and three other staff members at Anjali Mental Health Rights Organization, Kolkata, West Bengal, August 4, 2016.

empaneled, but the government was not responsive. You cannot just use a special educator, they need to be trained to work with people across disabilities. If she is a special educator for the blind, then how will she know how to support someone with cerebral palsy? The government should create lists of special educators and the Rehabilitation Council of India should draw up a training curriculum for special educators.⁷⁸

Meenakshi Balasubramaniam, from Equals—Centre for Promotion of Social Justice, a Chennai-based organization that works for the rights of people with disabilities, said that the lack of accommodation may serve as a deterrent or delay efforts to seek justice:

In most cases families don't go directly to the police to report cases of abuse of women with disabilities because they are not sure what kind of support they will get, whether the police will have a sign language interpreter, or a special educator. Instead, they contact a DPO [disabled persons organization] and go only through them because families know that if they require any accommodation, the DPOs will immediately provide them the support that they need.⁷⁹

Difficulties Engaging with Police

All police stations are required to have women police officers available around-the-clock to record complaints.⁸⁰ For women and girls with disabilities, who confront additional stigma and are often discredited or infantilized, it is particularly important to have a positive interaction with police to build faith in the criminal justice system.

⁷⁸ Human Rights Watch interview with Poonam Natarajan, former chairperson of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities for India's Ministry of Social Justice and Empowerment and founder of Vidyasagar, Delhi, November 15, 2016.

⁷⁹ Human Rights Watch telephone interview with Meenakshi Balasubramaniam, April 15, 2017.

⁸⁰ Under the Criminal Law Amendment Act, 2013, FIRs of stipulated crimes against women, including under sections 326, 354, 376, and 509 are to be recorded by a woman police officer. See Amendment to the Code of Criminal Procedure, 1973 by Criminal Law Amendment Act, 2013, No. 13 of 23 (inserting Proviso to Section 154 (1) CrPC). Consistent with this prescription, the Delhi High Court has held that every police station should have a woman police officer, not below the rank of head constable, available around-the-clock. As soon as a complaint of sexual offense is received, the officer receiving the complaint should be instructed to call a woman police officer to ensure that the victim of sexual abuse and their family are comfortable. See *Delhi Commission for Women v. Delhi Police*, Delhi High Court, W.P. (CRL) 696/2008, April 23, 2009.

Human Rights Watch found that in 16 out of the 17 cases examined for this report, women and girls with disabilities, their families and advocates, faced challenges at multiple stages of engaging with the police, including registering accurate complaints and ensuring competent investigations.

Difficulties Registering the FIR

People throughout India face police inaction and outright refusals to register crime complaints.⁸¹ Women and girls with disabilities who seek to register complaints of sexual violence are often at heightened risk of refusal due to the unique stigma associated with their sexuality and disability. According to Niranjan Behera, president of Odisha Viklang Manch, the state organization of persons with disabilities, “Police are generally insensitive towards women. When it comes to their behavior towards women with disabilities, it is even more so.”⁸²

Susmita, a then 26-year-old woman with a psychosocial disability, from Kolkata, West Bengal, told Human Rights Watch she was sedated and gang raped by four men who lived in the building next door in February 2014. However, according to her, the police refused to believe her or register her case on account of her disability. Susmita said:

I approached the police. The police asked me very nasty things like how it felt for me. I mean—I told them I was totally unconscious, so how would I know? The police said things like: “She’s mental, why should I pay attention to her?” “She’s a gone case, why should I listen?”⁸³

⁸¹ Human Rights Watch, *Broken System: Dysfunction, Abuse, and Impunity in the Indian Police*, August 2009, <http://www.hrw.org/sites/default/files/reports/india0809web.pdf>, p. 9, 41 (explaining that police officers face pressure from political leaders to show a reduction in crime by registering fewer FIRs. Police also attribute refusal to register FIRs to reluctance to take on new cases that add to an already heavy workload); Human Rights Watch, *Cleaning Human Waste: Manual Scavenging, Caste and Discrimination in India*, August 2014, <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>, p. 47.

⁸² Human Rights Watch interview with Niranjan Behera, State President of Odisha Viklang Manch, Bhubaneswar, Odisha, January 27, 2016. Charges in this case, if accepted, would likely involve the Information Technology Act, 2000, provision 66E on violation of privacy by “capture” of images; IPC section 375 on rape and 503 on criminal intimidation.

⁸³ Human Rights Watch interview with Susmita, Kolkata, West Bengal, January 20, 2016.

According to Susmita, the police only responded when she took her case to the media. After her case was covered in the news, Susmita said that she was interviewed by a woman police officer and that the perpetrators were arrested.⁸⁴

In December 2014, in Krishnagiri District, Tamil Nadu, Lakshmi, a 16-year-old girl with difficulties hearing and speaking was reportedly gang raped by four men from her village. Namburajan, an activist with the National Platform for the Rights of the Disabled (NPRD) in Tamil Nadu, described Lakshmi and her family's experience as they tried to register an FIR:

Lakshmi's father carried her for 14 kilometers [8.5 miles] on his shoulders to the nearest bus station to bring her to the government hospital. The police were called to the hospital but refused to file the complaint. Though the incident took place on December 25, 2014 and the father went to the police that very day, the police refused to lodge an FIR until January 2, 2015. They filed the FIR only when the Tamil Nadu Association for the Rights of All Types of Differently Abled and Caregivers (TARATDAC) held a protest demonstration. Even then, the FIR did not mention that Lakshmi had been gang raped. It only mentioned that she was raped.⁸⁵

⁸⁴ Ibid.

⁸⁵ Human Rights Watch telephone interview with Namburajan, treasurer, National Platform for the Rights of the Disabled (NPRD), July 7, 2016.

Anjali, a medical doctor, said that she felt well-supported when she approached police in Dehradun to report the case of her daughter, Meera, a 38-year-old woman with cerebral palsy and severe developmental delays:

The [station house officer] was very sensitive. He immediately had the room emptied after he spoke to me. He got me a lady IO [investigating officer] who was superb and he told her: ‘Get things done as quickly as possible. She is very keen to return home.’ They met with us alone in a room so that Meera could be on one side and I on the other—that way she could see me but she could not hear me. I was whispering very softly so Meera didn’t hear me recount the story. They finished the report in one hour.⁸⁶

The station house officer (SHO) at the Dehradun Kotwali police station explained his response: “In these cases, it is not only about procedures but also about humanity. I think of my role as a police officer, but also think as a husband and a father.”⁸⁷

In rape cases, all women and girls, including those with disabilities, have the right to file a complaint outside the police station, at a location of their choice.⁸⁸ POCSO sets forth obligations for police when engaging with victims, including ensuring that no child is detained at a station overnight.⁸⁹ Most women and girls with disabilities interviewed for this report spent extended hours at the police station. Some were held overnight.

In Hooghly District, West Bengal, Chandra, a 12-year-old girl with cerebral palsy was allegedly kidnapped, raped, and found bleeding in a nearby field in June 2013. Despite her

⁸⁶ Human Rights Watch interview with Anjali, New Delhi, August 12, 2016.

⁸⁷ Human Rights Watch interview with Station House Officer, Dehradun Kotwali Police Station, October 13, 2016.

⁸⁸ Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, section 24(1); Amendment to the Code of Criminal Procedure, 1973 by Criminal Law Amendment Act, 2009, No. 5 of 2009, (inserting Proviso to 157(1) CrPC).

⁸⁹ Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, section 24(4).

obvious disabilities and the visible injuries she had sustained, Chandra and her family had to wait overnight at the police station. Her father, Ashim, recounted:

The police saw bite marks and scratch marks all over her body. They questioned me about what happened and wrote it down. We reached the police station at 9 p.m. They told us to leave Chandra and go. We did not leave. How could we leave her alone? We stayed. They took us from the police station to the court at 9:00 the next morning. We stayed all night with Chandra in the station.⁹⁰

The treatment Chandra and her family received—a violation of Indian law—is not an isolated incident. In 2015, Noori, a 23-year-old woman with cerebral palsy was reportedly gang-raped and thrown from a rooftop. According to Shampa Sengupta from Sruti Disability Rights Centre: “The police detained her and her mother the whole night. The family was very nervous and abided by what the police officer said.”⁹¹ Later, when local advocates followed up with police, they were told that Noori was held in order to protect her—on the grounds that she may have been killed if she was sent to the village that night. Activists said that police never offered this explanation to Noori or her mother.⁹²

Failure to Record a Disability

Some women and girls with disabilities and their families said they were excluded from any accommodations due to inability to substantiate a disability.⁹³ Absent government certification of disability, when these families went to the police to report the crime and file a complaint, police did not include critical information on the woman’s disability in

⁹⁰ Human Rights Watch interview with Ashim, Hooghly District, West Bengal, August 5, 2016.

⁹¹ Memorandum submitted to the National Commission for Women on September 18, 2015 by the National Platform for the Rights of the Disabled, <http://www.kractivist.org/press-release-sexual-assaults-on-disabled-women-memo-to-ncw-vaw/>; Human Rights Watch telephone interview with Shampa Sengupta, director, Shruti Disability Rights Centre, August 18, 2016.

⁹² Ibid.

⁹³ For further information on difficulties accessing disability certificates, see Shiv Sahay Singh, “Only 40 percent of India’s disabled have access to disability certificates,” *The Hindu*, December 3, 2014, <http://www.thehindu.com/news/cities/kolkata/only-40-per-cent-of-indias-disabled-have-access-to-disability-certificates/article6657745.ece> (accessed March 11, 2018); and “A Just Step Forward: The disabilities bill is welcome, but falls short on some key issues,” *Economic and Political Weekly*, vol. 51, issue No. 51, December 17, 2016, http://www.epw.in/journal/2016/51/editorials/just-step-forward.html?o=ip_login_no_cache%3D8a3e61c0775e884b894c7ade50aee23c (accessed January 9, 2016).

their reports, even when a family member reported the disability or when the disability was apparent. As a result, they did not receive the accommodations provided by the law.

In October 2015, two men reportedly raped Maneka, a 15-year-old girl with an intellectual and physical disability from Delhi. Her family did not receive a copy of the FIR or the medical record on the day it filed charges and Maneka was medically examined. Once Maneka's lawyer was able to obtain the charge sheet, she noticed significant errors: although Maneka was 15 on the day she was raped, her age was misreported as over 18; and, since the family did not have a disability certificate, the police refused to report her intellectual disability and visible physical disability, despite being informed by the family.⁹⁴ Maneka's sister, Kanika, said:

We told the police she has a mental disability and she is physically handicapped—one of her hands does not work and one of her legs is also dysfunctional. You can see her disability but it was still not recorded in the FIR.⁹⁵

Such errors have had a profound impact on Maneka's case. Not only did the errors in recording her age exclude Maneka from protections under POCSO, exclusion of her intellectual and physical disabilities also undermined evidence collection. Although required under both POCSO and the 2013 amendments, Maneka did not receive support from a special educator in giving her statement and her testimony was not videoed. As a result, she has faced significant challenges in litigating her case. Priya, her lawyer, said:

Maneka has an intellectual disability. She has had problems remembering things later. Maneka's sister is a school teacher and supported Maneka to give her statement, but she did not know the procedures so did not ask for a special educator or video recording. After that first day, Maneka does not talk about the case at all.⁹⁶

⁹⁴ Human Rights Watch interview with advocate, Priya (pseudonym, name withheld to preserve confidentiality), Maneka's advocate, New Delhi, August 9, 2016.

⁹⁵ Human Rights Watch interview with Kanika, New Delhi, August 9, 2016.

⁹⁶ Human Rights Watch interview with Priya, Maneka's advocate, New Delhi, August 9, 2016.

Maneka's family said that she is traumatized by repeated visits to the court.⁹⁷ Her intellectual disability makes explanations particularly challenging. The video recording accommodation for women and girls with disabilities was introduced precisely for cases like Maneka's in order to relieve the strain of repeat testifying.

In order to ensure accurate registration and investigation of crime complaints, as law requires, the victim, family or other informant should receive a copy of the information recorded with police, free of cost.⁹⁸ This requirement ensures that victims and their advocates have a safeguard against inaccurate registration of crime complaints or subsequent revision of the FIR due to pressure from the accused. In Maneka's case, her lawyer received the FIR only months later.

Despite the errors in Maneka's case and the trauma experienced by Maneka and her family, with the support of a strong advocate, by March 2018 Maneka received a verdict in her favor. Each of the perpetrators of the gang rape received a prison sentence of 21 years and a monetary penalty of 50,000 Rupees (USD 772).

Lack of Police Training

Even when attempts to provide accommodations are made with good intentions, they may be inappropriate due to lack of police training and access to experts, such as special educators.

For instance, in Delhi, Pooja, an 11-year-old girl with an intellectual disability was taken to the police station in August 2013 by her father after they reported that a neighbor had raped her. The police brought in a sign language interpreter to assist in the interview, but this support proved futile. Pooja cannot speak due to a neurological condition, but she is not deaf and has no knowledge of sign language. Muralidharan, secretary of the National Platform for the Rights of the Disabled, said:

The lady officer brought in a sign language expert to try and communicate with the girl.... The police could have simply asked the family about her disability. But there is a very common misconception that a person who

⁹⁷ Human Rights Watch interview with Kanika, New Delhi, August 9, 2016.

⁹⁸ Code of Criminal Procedure, 1973, no. 2 of 1974, art. 154(2).

cannot speak is also deaf, so the exercise of bringing in a sign language interpreter to assist was futile. A special educator could have helped.⁹⁹

A memo submitted by the National Platform for the Rights of the Disabled, Sruti Disability Rights Center, and CREA to the National Commission for Women reflected upon the shortcomings in Pooja's case: "The intent here is not to find fault with the IO [investigation officer] but to point out the general lack of awareness among the police about these new provisions."¹⁰⁰

Debashree Sabuj, deputy police commissioner for women in Kolkata, attributed many of these shortcomings to a lack of training and information among police officers:

We have had no training. When we meet a disabled woman, we may not know how to speak to her properly. The police are not cruel. In most cases the police are simply ignorant. It is not that we don't want to believe them, but we also worry that if we make a mistake, the wrong person will be punished. The police need education and we need to be sensitized on how to handle these cases.¹⁰¹

While training modules at some police academies incorporate gender sensitive material, there are hardly any regular courses or follow up to ensure police have updated information on laws and policies to effectively support cases of people with disabilities, particularly women or girls, who have faced abuse and violence. Sanjay Gunjyal, inspector general of police from Uttarakhand, said training is the first step, but it is not enough:

Whenever there are new amendments or changes in the law, it is very important that all the investigating officers or police officers are aware. They should be properly trained and that training should not be limited to the law. They should also be sensitized to the emotional and the psychological needs

⁹⁹ Human Rights Watch interview with Muralidharan, secretary, National Platform for the Rights of the Disabled (NPRD), Delhi, June 23, 2016.

¹⁰⁰ Memorandum submitted to the National Commission for Women on September 18, 2015, by the National Platform for the Rights of the Disabled, <http://www.kractivist.org/press-release-sexual-assaults-on-disabled-women-memo-to-ncw-vawc> Social workers (accessed March 11, 2018).

¹⁰¹ Human Rights Watch interview with Debashree Sabuj, deputy commissioner for women in Kolkata, February 5, 2016.

of the victim and how to work with women and girls with disabilities. It is important to sensitize every officer—from top to bottom.¹⁰²

Gunjyal intervened in the case of Razia, a 13-year-old girl with an intellectual disability and difficulty speaking, who was raped in 2014. Violating POCSO, police had asked Razia to sit next to the perpetrator during the DNA testing, which was extremely traumatic for her. Rizwan Ali, the lawyer from the Latika Roy Foundation, an organization supporting the case, immediately asked the police to separate them. He said:

We knew that such an error could happen in other cases too. So we approached the then deputy inspector general, Sanjay Gunjyal, and he issued a curricular to all police stations in his range to ensure that such a problem in investigation would not occur.¹⁰³

Lack of Legal and Support Service Referrals

The Supreme Court of India has ruled that police are required to ensure that women and girls who suffer sexual violence have access to legal representation.¹⁰⁴ This includes maintaining a list of advocates willing to act in these cases and making this resource available for victims who do not have a lawyer. To ensure that victims are questioned without delay, in cases of sexual violence, the Supreme Court has authorized advocates to act at the police station before leave from the court is sought or obtained.¹⁰⁵

In cases of child sexual abuse, POCSO rules require police to inform the child and their parent or guardian of the right to representation and to support services, including counseling. Police should help families who want to pursue such services contact service providers.¹⁰⁶ Human Rights Watch found police do not always carry out these duties.

¹⁰² Human Rights Watch interview with Sanjay Gunjyal, inspector general of police, Dehradun, Uttarakhand, August 5, 2017.

¹⁰³ Human Rights Watch interview with Rizwan Ali Fahim, lawyer, Latika Roy Foundation, Dehradun, Uttarakhand, August 5, 2017.

¹⁰⁴ Delhi Domestic Working Women's Forum v. Union of India and Others, Supreme Court of India, 1995 SCC (1) 14, October 19, 1995.

¹⁰⁵ Ibid.

¹⁰⁶ Protection of Children from Sexual Offences Rules, 2012, G.S.R 823(E), Rule 4.

In the cases of sexual violence covered in this report, most women and girls with disabilities and their families reported difficulties in securing legal representation.

Shampa Sengupta, director of the Sruti Disability Rights Center in West Bengal, described reaching out to Noori, a 23-year-old woman with cerebral palsy, who was gang-raped in Hooghly District: “We contacted the father and he was a fighter—he was very interested in engaging with us. The police had not told them that they are entitled to legal assistance.”¹⁰⁷

Poonam Natarajan, former chairperson of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, said:

The problem here is two-fold: first, people with disabilities don’t know that they have free legal aid; and second, the legal service authorities are not trained to handle disability cases. We need to activate legal services authorities.¹⁰⁸

Barriers to Adequate Medical Treatment, Forensic Examination

Healthcare providers play a dual role in the response to sexual violence: they provide therapeutic care and assist in criminal investigations.¹⁰⁹ Under Indian law, all hospitals, whether public or private, must provide first aid or medical treatment to survivors of sexual violence, and prompt medical examination and reporting, consistent with established

¹⁰⁷ Human Rights Watch telephone interview with Shampa Sengupta, director, Shruti Disability Rights Centre, August 18, 2016.

¹⁰⁸ Human Rights Watch interview with Poonam Natarajan, former chairperson of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities for India’s Ministry of Social Justice and Empowerment and founder of Vidyasagar, Delhi, November 15, 2016.

¹⁰⁹ Human Rights Watch, *Dignity on Trial: India’s Need for Sound Standards for Conducting and Interpreting Forensic Examinations of Rape Survivors*, September 2010, <https://www.hrw.org/sites/default/files/reports/india0910webwcover.pdf>, p. 13.

legal standards, free of cost.¹¹⁰ Failure to uphold these responsibilities is punishable with a fine, imprisonment, or both.¹¹¹

Consistent with legal requirements,¹¹² police took Maneka, a 15-year-old girl with intellectual and physical disabilities, to the hospital. However, once there, neither Maneka nor her mother, Soumya, received information on the examinations that took place. Soumya said: “They took Maneka in for the examination all alone—she was scared. No one explained to me what tests they were doing.”¹¹³

POCSO requires that medical examinations take place in the presence of the parent of the child, or another person the child trusts. Failure to follow these provisions may exacerbate the trauma of sexual violence faced by girls like Maneka.¹¹⁴

In 2014, the Ministry of Health and Family Welfare issued guidelines for medico-legal care for survivors of sexual violence to health care professionals.¹¹⁵ These include specific requirements for medical treatment of women and girls with disabilities. They require

¹¹⁰ Amendment to the Code of Criminal Procedure, 1973 by Criminal Law Amendment Act, 2013, No. 13 of 23 (inserting section 357C CrPC). A survivor of rape has the right to approach medical services before legally registering a complaint in a police station. A doctor or hospital is now required to examine a victim of rape if she reports to the hospital directly, and voluntarily, without a police requisition. See *State of Karnataka v. Manjanna*, Supreme Court of India, 2000 (6) SCC 188, May 4, 2000. In cases where children are victims of sexual abuse, no medical practitioner, hospital or other medical facility center can demand any documentation as a prerequisite to providing emergency care. Required treatment is covered in rule 5(4) of the Protection of Children from Sexual Offences (POCSO) Rules, 2012, G.S.R 823(E), Rule 5(3)-5(5).

¹¹¹ Amendment to the Indian Penal Code, 1860 by Criminal Law Amendment Act, 2013, No. 13 of 23 (revising the First Schedule of the CrPC under the heading “1—OFFENCES UNDER THE INDIAN PENAL CODE”—inserting an entry in relationship to 166B of the IPC). Whoever is in charge of a hospital, public or private, whether run by the central or state government or otherwise, will be punished with imprisonment, fine or both for failing to treat a victim of acid attack or rape.

¹¹² Under the 2012 Protection of Children from Sexual Offences Rules, police are required to arrange for emergency medical care if needed by the child, to take the child to the hospital and to ensure forensic samples are sent to the forensic laboratory at the earliest. See Protection of Children from Sexual Offences Rules, 2012, G.S.R 823(E), rule 4. India’s higher courts have held that police are legally mandated to ensure that victims of sexual violence have access to immediate medical attention. See *Delhi Domestic Working Women’s Forum v. Union of India and Others*, Supreme Court of India, 1995 SCC (1) 14, October 19, 1995.

¹¹³ Human Rights Watch interview with Kanika, National Platform for the Rights of the Disabled (NPRD), New Delhi, August 9, 2016.

¹¹⁴ Protection of Children from Sexual Offences Act, 2012, no. 32 of 2012, section 2.

¹¹⁵ Guidelines and Protocols, Medico-Legal Care for Survivors/Victims of Sexual Violence, Ministry of Health and Family Welfare, Government of India, March 19, 2014, <http://www.mohfw.nic.in/showfile.php?lid=2737>. Specifically, the guidelines call on medical professionals to “ensure gender sensitivity in the entire procedure by disallowing any mention of past sexual practices through comments on size of vaginal introitus, elasticity of vagina or anus.” Further, it bars comments about built, height and weight, nutrition or gait that perpetuate stereotypes about whether someone was really a victim by commenting on their strength or ability to fight back. The guidelines also state that per vaginum or the “two-finger test” should not be done unless required for detection of injuries or for medical treatment.

medical professionals to attend to the kind, nature, and extent of disability; provide necessary accommodations, including making arrangements for interpreters or special educators; ensure that they take consent and medical histories directly from survivors; provide information on medical procedures in a manner the survivors can understand; and prohibit the use of the “two-finger test.”¹¹⁶

However, according to health rights groups, only nine states have so far adopted the guidelines, which Human Rights Watch found medical professionals often flout.¹¹⁷

For instance, the guidelines eliminate what is commonly known as the “two-finger test,” a practice where the examining doctor notes the presence or absence of the hymen and the size and so-called laxity of the vagina of the rape survivor, to assess whether girls and women are “virgins” or “habituated to sexual intercourse.” This evidence has been used during trials to assert that the rape survivor had “loose” or “lax” morals.¹¹⁸ The new guidelines limit internal vaginal examinations to those “medically indicated,” such as when it is done to diagnose infection, injury, or presence of a foreign body. However, Human Rights Watch has found that doctors continue to conduct the invasive, humiliating, and unscientific finger test to make degrading characterizations such as “habituated to sex.”¹¹⁹

Challenges in the Courts

Assistance During Trial

Attending court can be extremely traumatic for survivors of sexual violence. The language used in courtrooms by lawyers and judges in cases of rape and assault can be derogatory toward survivors. Courts themselves can be intimidating and confusing for survivors, and cross-examination may be particularly stressful.

This trauma may be heightened for women and girls with disabilities because of challenges navigating spaces that are often inaccessible, and if legal processes are not explained by lawyers and judicial officers in a manner that is accessible to them.

¹¹⁶ Government of India, Ministry of Health and Family Welfare, Guidelines and Protocols, Medico-Legal Care for Victims/Survivors of Sexual Violence, <http://uphealth.up.nic.in/med-order-14-15/med2/sexual-vil.pdf>. (See Appendix I).

¹¹⁷ See Human Rights Watch, “*Everyone Blames Me*,” <https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>

¹¹⁸ Human Rights Watch, *Dignity on Trial* <https://www.hrw.org/sites/default/files/reports/india0910webwcover.pdf>

¹¹⁹ Jayshree Bajoria, “Doctors in India Continue to Traumatise Rape Survivors with the Two-Finger Test,” Scroll.in, November 9, 2017, <https://scroll.in/article/857169/doctors-in-india-continue-to-traumatise-rape-survivors-with-the-two-finger-test>.



Shampa Sengupta, a disability rights activist, greets Kanchana, a 19-year-old woman with an intellectual disability, her mother, and Kanchana's young son. Kanchana was raped on multiple occasions by a man from her village. Four years later, the case has been closed and their application for compensation is pending (West Bengal). © 2016 Shantha Rau Barriga/Human Rights Watch

For instance, Diya, the mother of Kanchana, a 21-year-old woman with an intellectual disability, recounted a simple misunderstanding when the police asked Kanchana to wait in the plaintiff's witness box in the courtroom, which proved deeply traumatic:

When they led Kanchana away from me, she cried and screamed. The police explained that she would be able to see me and that they would bring her

straight back to my lap. She couldn't understand. She was terrified and thought she was being taken to a lock up.¹²⁰

Women and girls with disabilities may also face the added trauma of their accounts being discredited on the basis of their disability.¹²¹ An examination of judgments from India's appellate courts by legal researcher Saptarshi Mandal illustrates a systematic disregard for and devaluation of the testimonies of women with disabilities. Mandal concluded that this devaluation is embedded in evidentiary standards that define competency to testify and govern testimony of witnesses who are unable to speak.¹²²

Meera, a 38-year-old woman with cerebral palsy leading to developmental delays, regressed from a communication level of an 11 to a three-year old after she was raped. Meera testified in court, with the assistance of a special educator. The magistrate, however, refused to accept her testimony on the grounds that she did not use adult language. Her mother, Anjali, described the day that Meera testified:

Meera has given her statement in court and the psychologist interpreted it. The psychologist asked her, 'What did the bad man do?' And she said, sobbing, with tears running down her face, 'The bad man put his sussu' [child term for penis]—and she pointed down. She couldn't stop crying and the judge said—'I will not accept that word.' My daughter has barely managed to recover the communication of a 3-year-old. Even earlier she would not have known the anatomy of a man. The interpreter, a

¹²⁰ Human Rights Watch interview with Diya, Hooghly District, West Bengal, August 5, 2016.

¹²¹ UN Committee on the Rights of Persons with Disabilities, General Comment No. 3, para. 52, stating: "Women with disabilities face barriers to accessing justice including with regard to exploitation, violence and abuse, due to harmful stereotypes, discrimination and lack of procedural and reasonable accommodations, which can lead to their credibility being doubted and their accusations being dismissed. Procedures or enforcement attitudes may intimidate victims or discourage them from pursuing justice. These can include: complicated or degrading reporting procedures; referral of victims to social services rather than legal remedies; dismissive attitudes by police or other enforcement agencies. This can lead to impunity and invisibility of the issue, resulting in violence lasting for extended periods of time. Women with disabilities may also fear reporting violence, exploitation or abuse because they are concerned they may lose their support requirements from caregivers."

¹²² Saptarshi Mandal, "The Burden of Intelligibility: Disabled Women's Testimony in Rape Trials," *Indian Journal of Gender Studies*, 2013, vol. 20, no. 1, pp. 1–29. This study includes an analysis of 21 judicial decisions from India's appellate courts, including the High Courts and the Supreme Court. Mandal directs attention to limitations in sections 118 and 119 of the Indian Evidence Act, 1872. Notably, section 119 of the Evidence Act mentioned by Mandal in this analysis was revised under the 2013 criminal law amendments.

psychologist who knows Meera well, explained that it is a perfectly acceptable childlike word.¹²³

The judge called for Meera to return to court and testify in adult language, but her mother has refused. Anjali said:

She gave her testimony and that is the best she can do. I cannot put her through the trauma again. That day I could not get her into the car. She was letting her hands fly all over, she nearly broke the window of the car. I almost could not hold her. She loathes going to the court—she is terrified. There is no need for this.¹²⁴

Need for Witness and Victim Protection

Women and girls with disabilities—like other women and girls—may face pressure from perpetrators, communities, and even their own families to not seek legal redress. Karuna, a woman with low vision, did not tell her family after she was raped by a blind man. She explained, “He threatened me not to tell anyone. I was scared so I didn’t tell anyone what had happened.”¹²⁵

In cases where the perpetrator of sexual violence is a family member, Human Rights Watch found that women and girls with disabilities have had to flee their homes in order to protect themselves from ongoing violence and retaliation. Santoshi Kansari, a social worker who has been working to promote the rights of women and girls with disabilities in Chhattisgarh for the past five years, described the plight of two sisters, both of whom have physical disabilities from polio. These women were forced to go into hiding in order to escape pressure and threats from their family and community:

¹²³ Human Rights Watch interview with Anjali, New Delhi, August 12, 2016.

¹²⁴ Ibid. Instead of requiring Meera to testify once again, Anjali called for a stay in proceedings. She then appealed to the Supreme Court to transfer the case to a Special Court designated under POCSO on the grounds that Meera’s biological age at the time of the incident was 38 years old, but that her mental age is 6 due to the impact of cerebral palsy on her intellectual development. This line of legal reasoning met with sharp disapproval from disability rights activists who argued that granting an adult woman relief under a law designated for children based on her disability reinforces the stigma that women with disabilities should be infantilized. On July 21, 2017, the Supreme Court of India ruled that relief under POCSO must be determined by the victim’s biological rather than mental age. Written submissions on behalf of the petitioner are on file with Human Rights Watch.

¹²⁵ Human Rights Watch interview with Karuna, Shanta Memorial Rehabilitation Centre (SMRC), Bhubaneswar, Odisha, September 19, 2016.

The brother was raping both of his sisters. One is 39 and the other is 25 years old. They lived with their widowed mother and, before dying, the father left bigger pieces of farmland for his daughters. They were disabled so he wanted to create some security for them. In retaliation, the brother beat them and sexually abused them. I tried to intervene but the villagers and the panchayat [village head] aligned with the brother. The girls were afraid they would be killed if they tried to report. Two years ago, I brought them out of there, and the sisters are hiding in another village. They are afraid to speak up.¹²⁶

Since India has no national victim and witness protection program, retaliation for reporting instances of violence can have a particularly devastating impact on women and girls with disabilities who are ostracized by their families and communities on whom they rely for everyday support. Even in cases where women and girls with disabilities had support from their families, family members described facing pressure not to report cases of sexual violence. Women, girls and their families are particularly at risk of pressure, threats and retaliation when the perpetrator is considered to have higher social standing.

Ashim, the father of Chandra, the 12-year-old girl with cerebral palsy and high support needs, was advised not to pursue legal action by the *pradhan* [village headman] and other local leaders when his daughter was kidnapped, raped and left profusely bleeding in a nearby field by a politically well-connected man from the village. “They tried to force me not to press charges,” he said. “I refused to give in.”¹²⁷

Delays in Compensation

India’s Code of Criminal Procedure requires all state governments, in consultation with the central government, to prepare a scheme for victim compensation. Based on court recommendations, district or state legal service authorities are tasked with deciding the amount of compensation.

¹²⁶ Human Rights Watch telephone interview with Santoshi Kansari, social worker, July 7, 2016. Two years later, at the time of publication in March 2018, the sisters had been relocated to another area. They had decided not to press charges. Human Rights Watch telephone interview with Santoshi Kansari, social worker, March 9, 2018.

¹²⁷ Human Rights Watch interview with Ashim, Hooghly District, West Bengal, August 5, 2016.

The Code of Criminal Procedure also provides compensation in cases where no trial takes place because the offender cannot be traced or identified.¹²⁸ In cases of sexual violence perpetrated against a child, a special court may pass an order for interim compensation at any stage after the FIR is registered or final compensation when the case ends. State governments must pay compensation within 30 days of a special court order.¹²⁹

In 2013, the central government established the Nirbhaya Fund for schemes aimed at the prevention, protection, and rehabilitation of women. They allocated 3,000 crore rupees (US\$454 million) from 2013 to 2017,¹³⁰ most of which remains unutilized. No specific fund for persons with disabilities exists in India and women with disabilities are not explicitly mentioned in the Nirbhaya Fund. Meenakshi Balasubramaniam, from Equals—Centre for Promotion of Social Justice, said:

In the Nirbhaya Fund they should have put some amount aside for women with disabilities because accessibility and reasonable accommodation involves costs, but these aspects of access to justice for women and girls with disabilities have not been taken into consideration.¹³¹

Human Rights Watch found that even in the cases of sexual violence resulting in extreme injury, trauma, and economic hardship as a result of childbirth, women and girls with disabilities, compensation was awarded in only 5 of the 17 cases covered.

Noori, a 23-year-old woman with cerebral palsy and multiple disabilities, applied in 2014 for compensation to cover her medical expenses after she was reportedly gang-raped by three neighbors. At time of writing, she had not received any assistance from the state.

Obtaining compensation can be integral to the survivors' recovery and rehabilitation. Anjali, mother of Meera, a 38-year-old woman with cerebral palsy, recounted the devastating impact of her rape on Meera's developmental profile as the primary reason why she continued to seek compensation for her daughter:

¹²⁸ Code of Criminal Procedure, section 357A.

¹²⁹ Protection of Children from Sexual Offences Rules, 2012, rule 7(1)-(6).

¹³⁰ "Government Issues Guidelines for Administration and Operationalization of 'Nirbhaya Fund,'" Press Information Bureau, Government of India, April 1, 2015, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=117914> (accessed February 18, 2017).

¹³¹ Human Rights Watch telephone interview with Meenakshi Balasubramaniam, April 15, 2017.

After she was raped, Meera is in so much pain that she has shut out the world. Her weight has dropped by 15 kilos (33 pounds). She has terrible tantrums. She does not leave the house. Her communication level has dropped. She will need extensive therapy to regain her potential. She can do it. That is why I am fighting for compensation for my daughter. I am fighting for her ability to live again. She grew, she reached her potential and we want that back—we can get it back, but we need help.¹³²

Given the strong links between gender, poverty and disability,¹³³ compensation is particularly important for women and girls with disabilities and their families, especially those who live in rural areas. In 2014, Diya and Kanchana applied for compensation under a West Bengal scheme. After Kanchana was reportedly raped and decided to carry her son to term, Diya had no choice but to leave her work. Now, as the primary caregiver for her daughter and grandson, she is unable to leave the home. The case was closed in 2016 and their application for compensation remained pending at time of writing.

Even in cases where compensation has been awarded, it may not reach the person in need. After Razia, then a 13-year-old girl with an intellectual disability and difficulties speaking, was raped in August 2014, the family pursued justice through the courts—and won. Razia was granted compensation of two lakh rupees (US \$3,100). However, despite this favorable order, the money has yet to reach the family. Rizwan Ali Fahim, the lawyer from Latika Roy Foundation, who assisted in Razia’s case, said:

On January 3, 2016, the district legal services authority issued the order that [Razia] should get two lakh rupees as compensation. It has been more than [two years] and the money has not been received. The accused was jailed, the case was closed in [Razia’s] favor—but justice is incomplete.¹³⁴

¹³² Human Rights Watch interview with Anjali, New Delhi, August 12, 2016.

¹³³ UN Committee on the Rights of Persons with Disabilities, General Comment no. 3, para. 59, stating:

“Women represent a disproportionate percentage of the world’s poor as a consequence of discrimination, leading to a lack of choice and opportunities, especially formal employment income. Poverty is both a compounding factor and the result of multiple discrimination. Older women with disabilities, especially, face many difficulties in accessing adequate housing, they are more likely to be institutionalized and do not have equal access to social protection and poverty reduction programs.”

¹³⁴ Human Rights Watch interview with Rizwan Ali Fahim, lawyer, Latika Roy Foundation, Dehradun, Uttarakhand, August 5, 2017. At the time of publication, in March 2018, the family had not yet received compensation.

The One-Stop Crisis Center

A major program under the Nirbhaya Fund, established in 2013, is the One-Stop Crisis Center Scheme, which calls for places across the country where integrated services—police assistance, legal aid, medical and counseling services—are available to victims of violence.

Governed by standard treatment and examination protocols, these can play a key role in ensuring care and collection of forensic evidence for survivors of sexual violence.¹³⁵

In September 2015, in rural Karnataka, Latha, then a 16-year-old Dalit girl with epilepsy, was reportedly raped by a neighbor. Her relatives brought her to the hospital, and medical authorities helped the family contact the local one-stop crisis center. Rekha, the protection officer responsible for overseeing the one-stop crisis center, described the coordination between the center and police: she was not only able to persuade the family to lodge a formal complaint, but she assisted police in interviewing Latha.

The father was not ready to file the FIR but when Latha’s case came to my attention, I immediately called the police and registered the case. We are mandated to report such a case. I went with the police to the hospital to visit Latha. At that time, she was not able to name the perpetrator. The police initially made out the FIR with ‘perpetrator unknown.’ In order to get more information, they visited her village. Then, they returned to the hospital again and tried to take a statement. They did not have a lady police officer so I worked with them. They video recorded this process. Finally, Latha named the perpetrator and burst into tears.¹³⁶

More needs to be done to ensure that women and girls with disabilities and their families are aware of the services available in one-stop crisis centers, and that staff

¹³⁵ Human Rights Watch, “*Everyone Blames Me*,” <https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>.

¹³⁶ Human Rights Watch interview with Rekha, Karnataka protection officer, November 30, 2016.

are trained to support the rights and needs of women and girls with disabilities.

The document issued in 2015 by the Ministry of Women and Child Development to guide implementation of the One-Stop Center Scheme lacks provisions for accessible infrastructure, communication assistance, or any other reasonable accommodations. The budget guidelines provided in Annexure II of the document, moreover, do not make provisions for audio-visual recording of statements and other accommodations for women and girls with disabilities mandated under the 2013 amendments and POCSO.¹³⁷



A sign of a government-run one-stop crisis center in Bhubaneswar, Odisha. The one-stop crisis centers are places where integrated services—police assistance, legal aid, medical and counseling services—are available to victims of violence. These centers can play a key role in ensuring care and justice. © 2016 Shantha Rau Barriga/Human Rights Watch

¹³⁷ Ministry of Women and Child Development, One-Stop Centre Scheme, <http://www.wcd.nic.in/sites/default/files/ProposalforOneStopCentre17.3.2015.pdf> (accessed January 28, 2018).

Full Recommendations

Promising policy initiatives in India often falter due to poor implementation. Legal provisions designed to support access to justice for women and girls with disabilities in cases of sexual violence are no exception.

India's government should take urgent action—in collaboration with state governments, police, medical treatment and forensic facilities, justice system officials, child welfare committees, national and state commissions for women, legal aid services, and disabled people's organizations and other relevant civil society organizations to ensure access to justice for women and girls with disabilities.

To the Central Government and State Governments

Reporting Sexual Violence

- Enforce the Criminal Law Amendment Act, 2013, and policies announced to facilitate access to justice for survivors of sexual violence by:
 - Implementing the 181-national helpline and ensuring 24-hour access to support for women and girls across disabilities seeking relief in cases of sexual violence, including through activation of text-based services.
 - Designing a certification course to equip support people (“special educators”) to work with persons with different disabilities. Require that special educators appointed by police, judiciary and Child Welfare Committees are trained and certified.
- As called for under section 7 of the Rights of Persons with Disabilities Act, 2016, conduct a public information campaign to create awareness, including among women and girls with disabilities and their families, about their rights and the procedures for accessing justice in cases of sexual abuse.
 - Ensure that information is made available in accessible formats, including braille, audio, sign language, video and easy-to-understand formats.
 - Issue a directive to all *gram panchayats* (village councils) requiring them to disseminate accessible information on rights and procedures for accessing justice to all households.

- Ensure that Child Welfare Committees are equipped to meet the needs of girls with disabilities who are victims of sexual violence, by:
 - Ensuring that personnel are sensitized to the needs of girls with disabilities.
 - Appointing special educators and interpreters to support Child Welfare Committees in assessing and meeting the rights and needs of girls with disabilities.

Medical Treatment and Examination

- Adopt and implement the Ministry of Health and Family Welfare Guidelines and Protocols for Medico-Legal Care for Survivors/Victims of Sexual Violence.
 - Ensure that medical professionals are trained to provide adequate accommodations to women and girls with disabilities.
 - Appoint special educators and sign language interpreters to ensure that hospitals and medical centers can provide accessible services.
 - Hold periodic trainings for doctors, paramedics, nurses and other health professionals on these guidelines.
 - Ensure that medical forms and consent forms are available in local languages, easy-to-read and other accessible formats.
- Ensure that government and private hospitals that receive government subsidies are accessible to women and girls with disabilities, in line with universal design as defined by article 2 of the Convention on the Rights of Persons with Disabilities.¹³⁸
- Enforce 2014 Health Ministry Guidelines on the use of the “two-finger test” and its variants from all forensic examinations of female survivors, as it is an unscientific, inhuman and degrading practice.
- Call for the Indian Medical Association, Indian Council of Medical Research, and Medical Council of India to include the particular needs of women and girls with disabilities in all existing and forthcoming training modules and medical standards for training medical students on treating and examining victims of sexual violence.

¹³⁸ The Convention on the Rights of Persons with Disabilities provides the following definition of universal design: “‘Universal design’ means the design of products, environments, programmed and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. ‘Universal design’ shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.” CRPD, art. 2.

Compensation and Rehabilitation

- Ensure all states adopt the minimum amount mandated by the central government for compensation for victims of rape.
- Direct district and state legal service authorities to grant compensation that accounts for the particular needs of women and girls with disabilities.
- Ensure that shelter homes and short stay homes for women survivors and women in distress are accessible for girls and women with disabilities.
 - Train personnel responsible for running shelter homes and short stay homes on the rights and particular needs of women and girls with disabilities.
 - Make shelter homes and short stay homes physically accessible to women and girls across disabilities.
 - Ensure that the duration of stays in shelter homes and short stay homes are determined with the consent of the woman and girl seeking relief.

Nirbhaya Fund

- Allocate specific funds within the Nirbhaya Fund to support accessibility and reasonable accommodation for women and girls with disabilities.
- Create transparent mechanisms for disbursement of the Nirbhaya Fund.
- Ensure that one-stop crisis centers are properly equipped and accessible to women and girls with disabilities, including via training for staff and medical professionals.

Systematic Data Collection

- Within the National Crime Records Bureau, disaggregate data on the basis of gender, disability and age to be able to facilitate analysis of crimes of sexual and gender-based violence against women and girls with disabilities, and to inform government policies, programs and services to better address their needs.

To the Judiciary

- Ensure that Fast Track Courts and Family Courts are accessible in terms of physical access, communication and procedural aspects.
- In consultation with national and state judicial academies, expand training for trial and appellate court judges and public prosecutors on the rights of survivors with disabilities in cases of sexual violence to include:

- Training on provisions pertaining to women and girls with disabilities under the Criminal Law Amendment Act, 2013, and the Protection of Children from Sexual Offences Act, 2012.
- Sensitization on supporting persons with disabilities to provide accurate testimony in cases of sexual violence in a manner least traumatic for the survivor and upholds the fair trial rights of the defendant.
- Ensure magistrates have specific training on accommodations for people with disabilities.
 - Appoint trained special educators and interpreters to ensure that accommodations are available to women and girls with disabilities in all judicial proceedings.
 - Expedite interim compensation for women and girls with disabilities who are victims of sexual violence to meet immediate needs.

To the Union and State Home Ministries, and Police Services

- Provide accessible information to women and girls with disabilities about their rights in cases of sexual violence.
 - Appoint special educators and interpreters to ensure that accommodations are available and provided.
- Issue clear, consistent and unambiguous directives to division and district supervising officers to ensure that an FIR be registered in every case in which police receive information that on its face suggests the commission of sexual violence, including sexual violence against women and girls with disabilities.
 - Ensure that information concerning the disability of the woman or girl is recorded in the FIR, whether or not they can produce a disability certificate.
- Strictly enforce the requirement that a completed FIR be read to the complainant and that they receive a free copy. Ensure the information in the FIR is communicated in an accessible manner for women with disabilities or parents of children with disabilities.
- Increase the number of women police officers, their promotion opportunities, and the number of women's police stations. Ensure that women police officers are sensitized to the rights and particular needs of women and girls with disabilities, including how to support victims of sexual violence, record their claims, and interview them for the purpose of crime investigation.

- Instruct police stations to create a database of special educators and legal aid providers to support women and girls with disabilities who seek relief in cases of sexual violence and other crimes.
- Organize special programs for police related to prosecuting cases of sexual violence perpetrated against women and girls with disabilities. Training content should include:
 - Training on provisions pertaining to women and girls with disabilities under the Criminal Law Amendment Act, 2013, and the Protection of Children from Sexual Offences Act, 2012.
 - Sensitization on supporting persons with disabilities to register complaints, access appropriate and effective accommodations, receive immediate medical attention and access to legal counsel and other support services.
 - Mandatory training for investigating officers regarding sexual violence. Training should include investigative methods applicable to sexual violence cases, including accommodations for persons with disabilities, working with traumatized victims, protecting victims from harassment, gathering forensic evidence, and collecting and preserving evidence.

To the Indian Parliament

- Enact a victim and witness protection program that includes protection for women and girls, including women and girls with disabilities, who face retaliation for reporting sexual violence. The law should direct the central and state governments to adequately fund witness protection programs.

To the National Legal Services Authority

- Expand the National Legal Services Authority (Legal Services to the Mentally Ill Persons and Persons with Mental Disabilities) Scheme, 2010, to include all women and girls with disabilities. Revise the language of the scheme so that it is consistent with the Convention on the Rights of Persons with Disabilities.
- Raise awareness among women and girls with disabilities and organizations of people with disabilities about access to free legal services in cases of sexual violence.
- Train state and district legal services authorities on the rights and particular needs of women and girls with disabilities.

To National and State Commissions for Women

- Ensure that women’s and children’s helplines are available across the country, 24 hours a day and trained to support women and girls with disabilities.
 - Consult people with diverse disabilities and their representative organizations and disability rights experts to ensure that helplines are accessible for persons with different disabilities. For instance, phone helplines should be text-enabled for women who are deaf or hard of hearing.
- Coordinate action pertaining to access to justice for women and girls with disabilities between the Office of the Commissioner for Persons with Disabilities and the National and State Commissions for Women.

To the Australia, Canada, European Union, United Kingdom, United States, Other Concerned Governments, Foreign Donors, and Aid Agencies

- Encourage the Indian government to respect its international obligations under the Convention on the Rights of Persons with Disabilities, with a particular emphasis on access to justice:
 - Consistent with article 13, call for effective access to justice for persons with disabilities on an equal basis with others, including through the “provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”
 - As prescribed by article 16, call for all appropriate measures to protect persons with disabilities from all forms of exploitation, violence and abuse, including by providing information on how to avoid, recognize and report instances of exploitation, violence and abuse.
- Provide increased support for disabled persons organizations in India to engage in activities to facilitate access to justice for people with disabilities in cases of sexual violence.

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Appendix I

Government of India, Ministry of Health and Family Welfare, Guidelines and Protocols, Medico-Legal Care for Victims/Survivors of Sexual Violence

The guidelines for medical examination of women and girls with disabilities are as follows:

Guidelines for examination:

Be aware of the nature and extent of disability that the person has and make necessary accommodations in the space where the examination is carried out.

Do not make assumptions about the survivor's disability and ask about it before providing any assistance.

Do not assume that a person with disability cannot give history of sexual violence himself/herself. Because abuse by near and dear ones is common, it is important to not let the history be dictated by the caretaker or person accompanying the survivor. History must be sought independently, directly from the survivor herself/himself. Let the person decide who can be present in the room while history is being sought and examination conducted.

Make arrangements for interpreters or special educators in case the person has a speech/hearing or cognitive disability. Maintain a resource list with names, addresses and other contact details of interpreters, translators and special educators in and around your hospital, who could be contacted for assistance.

Even while using the services of an interpreter, communicate with the person directly as much as possible, and be present while the interpreter or special educator is with the person.

Understand that an examination in the case of a disabled person may take longer. Do not rush through things as it may distress the survivor. Take time to make the survivor comfortable and establish trust, in order to conduct a thorough examination.

Recognize that the person may not have been through an internal examination before. The procedure should be explained in a language they can understand. They may have limited knowledge of reproductive health issues and not be able to describe what happened to them. They may not know how they feel about the incident or even identify that a crime was committed against them.

Ensure that adequate and appropriate counselling services are provided to the survivors. If required, the services of an expert may be required in this regard, which should be made available.

Consent: All persons are ordinarily able to give or refuse to give informed consent, including persons with mental illness and intellectual disabilities, and their informed consent should be sought and obtained before any medical examination. Some specific steps may be required when taking informed consent from persons with mental illness or those with intellectual disabilities. If it is deemed necessary, such persons should (a) be provided the necessary information (what the procedure involves, the reason for doing the procedure, the potential risks and discomforts) in a simple language and in a form that makes it easy for them to understand the information; (b) be given adequate time to arrive at a decision; (c) be provided the assistance of a friend/colleague/care-giver in making the informed consent decision and in conveying their decision to medical personnel. The decision of the person to either give consent or refuse consent with the above supports, to the medical examination, should be respected.

INVISIBLE VICTIMS OF SEXUAL VIOLENCE

Access to Justice for Women and Girls with Disabilities in India

In India, women and girls with disabilities face a heightened risk of sexual violence. They may find it more difficult to escape from violent situations, call for help, or have additional problems communicating abuse. Many do not even know that non-consensual sexual acts are a crime and should be reported. Because of the stigma associated with sexuality and disability, access to justice is particularly difficult for women and girls with disabilities. As a result, they often do not get the support they need at each stage of an already-daunting justice process: reporting the abuse to police, getting appropriate medical care, navigating the court system, and seeking compensation.

Based on 17 cases of sexual violence against women and girls with disabilities in eight states in India, *Invisible Victims of Sexual Violence* examines the particular challenges that women and girls with disabilities experience while trying to seek justice for sexual violence. The report finds that while 2013 law reforms represent significant progress for victims' rights, authorities have yet to properly develop and implement adequate support for survivors with disabilities.

Indian authorities should take concrete measures to address the various needs of women and girls with disabilities seeking justice for sexual abuse, including training for police, health workers, and judicial officers, and creating the infrastructure that would allow women and girls with disabilities to participate effectively in the criminal justice process. The government should also conduct public information campaigns to reduce stigma and create awareness about disability rights.



(above) Karuna, a woman with low vision, did not tell her family after she was raped by a blind man. She explained, "He threatened me not to tell anyone. I was scared so I didn't tell anyone what had happened" (Odisha). © 2016 Shantha Rau Barriga/Human Rights Watch

(front cover) When she was 13, Razia (not her real name), who has an intellectual disability and difficulties in speaking, was raped by her brother's tutor in 2014. Razia is still awaiting compensation she was awarded by the district legal services authority in January 2016. (Uttarakhand). © 2017 Abhishek Kumar Mehan for Human Rights Watch