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Right to Health of Persons with Disabilities During Covid-19: Obligation of the State

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ABSTRACT

Persons with disabilities will have difficulty to access health care, education, employment, and community participation even in normal circumstances. They are more likely to suffer from higher rates of violence, neglect, and abuse, and to be among the most marginalized in any community affected by a crisis. COVID-19 has exacerbated the problem by having a disproportionately negative impact on people with disabilities, both directly and indirectly. Mostly, people with disabilities will have pre-existing health conditions that make them more vulnerable to contracting the virus, causing them to have more severe symptoms and dying at higher rates. During the COVID-19 crisis, people with disabilities who rely on others for assistance may become isolated and unable to survive lockdowns, especially those who live in institutions, as evidenced by the high number of deaths in residential care homes and psychiatric facilities. Access to health services and information has become more difficult for people with disabilities. In an infectious disease pandemic situation like Covid, this article discusses the unique roles of the state and other stakeholders in ensuring the health rights of people with disabilities. This impact can be reduced if key stakeholders take the necessary actions and precautions on time. The objective of this study is to examine the impact of the COVID-19 pandemic on people with physical disabilities, as well as the isolation and protective measures that have been implemented by the State to protect them.

I. INTRODUCTION

Please understand I have a disability, not a disease. You can't catch it. I may walk, talk, and move differently than you do, but on the inside, I'm not so different

----- Charisse Hogan²

The COVID-19 pandemic has impacted the lives of everyone on the planet, in one way or the other. This is truly a global pandemic in all senses, and we have all been forced to grapple its effects, both as an individual and as society. As a result of the COVID-19 crisis and the

¹ Author is a Research Scholar at Government Law College, Ernakulam, Kerala, India.

² CHARISSE HOGAN <https://www.greep.com/greep-athletes/charisse-hogan/> (last visited May, 31, 2021)

ensuing prolonged lockdown, the entire world is under tremendous stress, affecting the lives and livelihoods of millions of people. People with disabilities, who are among the most vulnerable to neglect and exclusion during times of unrest and crisis, have been disproportionately affected by this unprecedented public health emergency and subsequent lockdown.

As per World Health Organization (WHO), over 1 billion people around the world are estimated to be disabled during this pandemic. This relates that about 15% of the global population, with up to 190 million (3.8%) people aged 15 and older experiencing significant difficulties in functioning, necessitating the use of healthcare.³ The census report of India 2011 indicates that there are 26.8 million people with disabilities.⁴ COVID-19 and the ensuing lockdowns have severely limited the mobility of disabled people, restricting their ability to seek and avail basic necessities, healthcare, and assistance.⁵ Caregivers have been unable (and in some cases unwilling) to reach out to those who require their help. Many people have lost access to life-saving medical care and peer support which has made their life miserable.

Persons with disabilities (PWD's) are less likely to have access to health care, education, employment, or community participation even under normal circumstances. They are more likely to be poor and will experience higher rates of violence, neglect, and abuse, and to be among the most marginalized in any community affected by a crisis. COVID-19 has exacerbated the problem by disproportionately affecting disabled people, both directly and indirectly.⁶ Therefore, it is critical to design strategies that can improve the overall wellbeing of PwDs so that they can mitigate these challenges, their impact, and the risk of infection. This study intends to analyse the following issues

- The impact of Covid-19 on the Right to Health of Persons with Disabilities (PwDs)
- To identify the strategies taken by the Indian Government to mitigate the problems faced by the PwDs during this Pandemic

³ WORLD HEALTH ORGANIZATION, <https://www.who.int/news-room/fact-sheets/detail/disability-and-health> (last visited May, 31, 2021)

⁴ CENSUS OF INDIA https://censusindia.gov.in/2011census/population_enumeration.html (last visited May, 31, 2021)

⁵ SREI CHANDA, T V SEKHER, *Disability during COVID-19 Increasing Vulnerability and Neglect*, EPW, 55, 39,(2020)

⁶ U N POLICY BRIEF: *A Disability-Inclusive Response to COVID* (19 MAY 2020) <https://unsdg.un.org/sites/default/files/2020-05/Policy-Brief-A-Disability-Inclusive-Response-to-COVID-19.pdf> (last visited May 31, 2021)

- Lastly to provide suggestions and inputs for ensuring the rights based COVID-19 responses inclusive of persons with disabilities.

II. MEANING AND CONCEPT OF DISABILITY

Human being entails some level of disability. At some point of time in their lives, almost everyone will be disabled, either temporarily or permanently. Over one billion people – roughly 15% of the world's population – are disabled, and the number is growing. In India, as per the census of 2011, there are 26.8 million people with disabilities. Persons with physical disabilities, vision impairment, hearing/speech impairment, intellectual disability and poor mental health, elderly people in poor health, destitute women, and a section of self-employed people with no skill are among the deeply deprived people, who make up around 50 million of the Indian population. The interaction between people with a health condition (e.g., cerebral palsy, Down syndrome, and depression) and personal and environmental factors (e.g. negative attitudes, inaccessible transportation and public buildings, and limited social supports) is referred to as disability.⁷

Disabilities comes in wide range of forms. Some disability-related health conditions result in poor health and needs extensive healthcare , while others do not. People with disabilities, on the other hand, have the same general healthcare needs as everyone else and, as a result, require access to all mainstream healthcare services as well. Article 25 of the UN Convention on the Rights of Persons with Disabilities (CRPD)⁸ affirms that people with disabilities have the right to receive the best possible healthcare, free of discrimination. However, only few countries in the world provide adequate, high-quality services for people with disabilities.⁹

In India following the passage of the Rights of People With Disabilities Act in 2016¹⁰, the definition of "disability" now includes 21 different types of disabilities. It includes anyone who's physical or mental conditions cause them to be immobile, such as those suffering from neurological or blood disorders, mental retardation, or the inability to move, speak, hear, or see. Those with deformities or injuries, such as acid attack victims, are also included.

People with disabilities have worse health outcomes, less access to education and employment opportunities, and are more likely to live in poverty than people without disabilities. People with disabilities frequently do not receive the healthcare services they

⁷ WORLD HEALTH ORGANISATION <https://www.who.int/news-room/fact-sheets/detail/disability-and-health> (last visited May 31, 2021)

⁸ CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, March, 30th, 2007, A/RES/61/106 (herein after CRPD)

⁹ *Supra* note 7

¹⁰ The Rights of Persons with Disabilities Act, 2016, NO. 49, Acts of Parliament, 2016 (India)

require. According to statistics, half of the disabled people cannot afford adequate healthcare which they need because of their disability. People with disabilities are also more than twice as likely to believe that healthcare providers' abilities are insufficient. Although significant progress has been made in making the world more accessible to people with disabilities, significant amount of work remains to be done to meet their minimum and basic needs.¹¹

III. HUMAN RIGHT TO HEALTH OF THE DISABLED DURING COVID 19

COVID-19 is being combated in order to protect the lives of all people. Invoking the right to life serves as a reminder that all states have a responsibility to protect human life, including by addressing societal conditions that lead to direct threats to life. States are putting forth extraordinary efforts in this regard, and it must remain the top priority. The right to life is inextricably linked to the right to health. COVID-19 puts States' ability to protect the right to health to the test. Every human being has the right to get the best possible health that allows them to live a dignified life. Everyone should have access to the health care they require, regardless of their social or economic status.

The ability to respond to this pandemic and provide essential health services has been harmed due to historical underinvestment in healthcare infrastructure/ systems. COVID-19 demonstrates the importance of Universal Health Coverage (UHC). States with strong and resilient healthcare systems who have better infrastructure are better prepared to deal with disasters like this. Health-care systems all over the world are overburdened, with some on the verge of collapsing. UHC aims to build strong and resilient health systems by reaching out to the most vulnerable people and encouraging pandemic preparedness and prevention.

Universal affordable health-care systems aid in the fight against the pandemic by ensuring that everyone, without discrimination, has access to basic measures to stop the virus from spreading. This health care should include, Covid Testing, specialist care for the most vulnerable, intensive care for those in need, vaccination when available, regardless of their financial status. Some countries have extended health coverage to everyone in their country in this pandemic, while others have reached agreements with private sector health-care providers to make their facilities available to the pandemic response.¹²

The World Health Organization's (WHO) Constitution also recognizes the highest attainable standard of health as a fundamental human right¹³. Access to appropriate quality health care

¹¹ *Supra* note 7

¹² *Supra* note 8

¹³WORLD HEALTH ORGANISATION <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>

in a timely, acceptable, and affordable manner is part of the right to health. The right to health requires governments to create conditions that allow everyone to be as healthy as possible.

In terms of health and rehabilitation, the Convention on the Rights of Persons with Disabilities¹⁴ reinforces and strengthens protection for people with disabilities. It recognizes that persons with disabilities have the right to get the highest attainable standard of health and that States Parties must recognize that right without discrimination based on disability (Art. 25)¹⁵, as well as the right of persons with disabilities to access all types of rehabilitation services (Art. 26)¹⁶. Furthermore, the Convention recognizes the right of people with disabilities to receive a variety of in-home, residential, and other support services in their communities (Art. 19)¹⁷

IV. CHALLENGES FACED BY PERSONS WITH DISABILITIES DURING COVID-19

People with disabilities were already a marginalized group, and had limited access to healthcare and community support services. Most probably, many of them will be struggling to meet their daily needs as well. People with disabilities are considered vulnerable in this crisis because of their reliance on services and others to meet specific needs and their increased susceptibility to COVID-19. Even though the COVID-19 pandemic poses a threat to all members of society, people with disabilities are disproportionately affected by the pandemic due to attitudinal, environmental, and institutional barriers that are repeated in the COVID-19 response.

➤ ***COVID-19 infection is more likely to affect people with disabilities***

For a variety of reasons, PwDs may find it difficult to implement basic protection measures such as hand washing and maintaining physical distance, such as a lack of access to water, sanitation, and hygiene (WASH) facilities;¹⁸ a reliance on physical contact for support; inaccessibility to public health information; or being placed in overcrowded and unsanitary institutional settings. These obstacles are exacerbated for those living in squatter camps and/or those affected by humanitarian crises.¹⁹

¹⁴ *Supra* note 8.

¹⁵ Art. 25- Health, Convention on the Rights of Persons with Disabilities (CRPD)

¹⁶ Art. 26 – Habilitation and rehabilitation, Convention on the Rights of Persons with Disabilities (CRPD)

¹⁷ Art. 19 – Living independently and being included in the community, Convention on the Rights of Persons with Disabilities (CRPD)

¹⁸ WHO, Disability Considerations During The COVID-19 Outbreak, 2020, https://www.who.int/docs/default-source/documents/disability/eng-covid-19-disability-briefing-who.pdf?sfvrsn=963e22fe_1 ((last visited May, 31, 2021)

¹⁹ UNITED NATIONS, Policy Brief: A Disability-Inclusive Response to COVID-19 MAY 2020 <https://unsdg.un.org/sites/default/files/2020-05/Policy-Brief-A-Disability-Inclusive-Response-to-COVID-19.pdf>

➤ ***Access to helplines, communication and accessible information***

There is lack of readily available information on Covid-19. The majority of people have been unable to use helplines. Furthermore, there is no dedicated helpline for people with disabilities, making it more difficult for them, particularly those who are deaf or those who have difficulties in hearing.²⁰

➤ ***COVID-19 puts people with disabilities at a higher risk of developing more serious health problems and dying.***

PWD's have more health needs and have worse health outcomes. For example, they are more prone to secondary conditions and co-morbidities like lung disease, diabetes, heart disease, and obesity, all of which can exacerbate the effects of COVID-19 infections.²¹ During the COVID-19 crisis, access to healthcare is further hampered, making timely and appropriate care difficult for people with disabilities.

➤ ***In institutions, people with disabilities are more likely to contract the virus and have higher mortality rates.***

People with disabilities, including older people, make up the majority of people who are institutionalized around the world.²² People with disabilities, particularly those with intellectual and psychosocial disabilities, are overrepresented in the prison population.²³ People in institutions such as nursing homes²⁴, social care homes, and psychiatric facilities,²⁵ as well as detention centers and prisons, face significant challenges in implementing basic hygiene measures and maintaining physical distance, and have limited access to COVID-19-related information, testing, and healthcare.²⁶

➤ ***During the COVID 19 outbreak, people with disabilities are more likely to face discrimination when seeking healthcare and life-saving procedures.***

In some countries, health care rationing decisions, such as triage protocols (e.g. intensive care

²⁰ Audrey Lebrasseur ET, AL., *Impact Of COVID-19 On People With Physical Disabilities: A Rapid Review*, 14 DISABIL HEALTH J (2021)

²¹ Awadhesh Kumar Singh, *Comorbidities In COVID-19: Outcomes In Hypertensive Cohort And Controversies With Renin Angiotensin System Blockers*, 14 DIABETES METAB SYNDR., 283–287, 2020.

²² M. Luppá ET, AL., *Prediction of Institutionalization In The Elderly. A Systematic Review*, 39 AGE AGEING 31 (2010).

²³ PENAL REFORM INTERNATIONAL, *Global Prison Trends 2020*, <https://www.penalreform.org/resource/global-prison-trends-2020/> (last visited May 31, 2021)

²⁴ UNITED NATIONS, *Policy Brief: Impact of COVID-19 on Older Persons*, (May, 1, 2020)

²⁵ United Nations, *COVID-19 and Human Rights: We are all in this together*, April, 23, 2020, <https://www.un.org/en/un-coronavirus-communications-team/we-are-all-together-human-rights-and-covid-19-response-and>

²⁶ LTC RESPONSES *Mortality Associated With COVID-19 Outbreaks In Care Homes: Early International Evidence*, (February, 1, 2021)

beds, ventilators), are made based on discriminatory criteria, such as age or assumptions about the quality or value of life based on disability²⁷, rather than an individual prognosis. Furthermore, increased pressure on healthcare systems may limit access to healthcare, rehabilitation, and assistive technologies for people with disabilities, including in terms of accessibility and affordability²⁸.

➤ ***Access to necessities (for example, food, clothing, and shelter):***

For people with mobility issues, getting food and groceries has become particularly difficult. When communication barriers exacerbate an already difficult situation, the problem becomes even worse. According to the NCPEDP survey, 67 percent of people with disabilities do not have access to government-provided essentials delivered to their doorstep. Only 22% of people have access to essential supplies.²⁹

➤ ***Caregivers, assistive devices, and support groups availability:***

Those who rely on daily caregivers, face unprecedented challenges in maintaining social distance while seeking help.³⁰ Caregivers were unable to be with the disabled people who rely on them overnight due to the near-total lockdown. Even if the caregiver was willing to perform the duties (despite the risk of becoming infected themselves), the lack of transportation options made it impossible. Assistive devices can make a big difference in a person's life and ability to function

➤ ***Some people with disabilities have been put at risk as a result of the lockdown, which has resulted in restrictions on services and purchases.***

People with disabilities who rely on social and peer support groups and systems, as well as reading rooms, listening circles, cafes, and friendship groups, have found themselves isolated and alone, with no lifesaving social contacts.

➤ ***Financial difficulties:***

Pensions for PWDs have not been released in many states (including Maharashtra). Payment has been delayed by 5 months in states like Jharkhand and Bihar, and it is being released very slowly. Many people have lost their jobs as a result of the pandemic. Many of them do not officially fall into the BPL category, and as a result, they do not receive any financial

²⁷ S. Bagenstos, *May Hospitals Withhold Ventilators from COVID-19 Patients with Pre-Existing Disabilities? Notes on the Law and Ethics of Disability-Based Medical Rationing*, 130 Yale L.J. (2020).

²⁸ Baart & F. Taaka (2017), *Barriers to Healthcare Services for People with Disabilities in Developing Countries: A Literature Review*, 29 Disability, CBR & Inclusive Development, (2017).

²⁹ NCPEDP COVID – 19 Helpline data, <https://www.ncpedp.org/publication>

³⁰ Varsha Iyengar, *Covid-19 and Rights of Persons with Disabilities in India*, OXFORD HUMAN RIGHTS CLUB, (11th May 2020), <https://ohrh.law.ox.ac.uk/covid-19-and-rights-of-persons-with-disabilities-in-india/>

assistance or free rations, despite their financial hardship.

➤ ***Discrimination, violence, and abuse:***

In times of great stress, incidents of abuse and attacks on people with disabilities tend to rise because they are often unable to adequately defend themselves. Abandonment of disabled family members is also a serious problem. Increased household size, sharing and decision-making during times of scarcity, poverty, and a lack of purposeful activities all complicate household relationships, resulting in more conflict and negligence.

➤ ***Psychosocial issues:***

PwDs have a higher risk of depression, lower life satisfaction, and increased loneliness when compared to the general population.³¹ Pandemics, such as the current COVID 19 pandemic, disrupt human existence and disproportionately affect people with disabilities. Those with pre-existing mental health issues or psychosocial disabilities are disproportionately affected by the lockdowns. Reduced access to medication, as well as the added stress, can cause relapse of symptoms in people with mental illness or epilepsy.

➤ ***Issues of children with disabilities:***

The most vulnerable are children with disabilities. Because of their near total reliance on parents or other caregivers, many people find themselves on the receiving end of their guardians' distress. They are at an unfair disadvantage in mainstream education as a result of the lockdown. Disabled children are particularly difficult to reach through distance learning programs. They are among the most reliant on face-to-face services, such as health, education, and security, which have been halted as a result of physical separation and lockdown. They are the people who are least likely to benefit from distance learning.

➤ ***Issues of Women with disabilities:***

Women with disabilities are subjected to additional discrimination due to intersectional discrimination. They face prejudice on multiple levels, including prejudice based on gender, poverty, lack of education, and social prejudice. They are more vulnerable to sexual assault and violence because they are frequently denied sexual and reproductive rights. During the COVID-19 lockdown, domestic violence appears to be on the rise in the country.

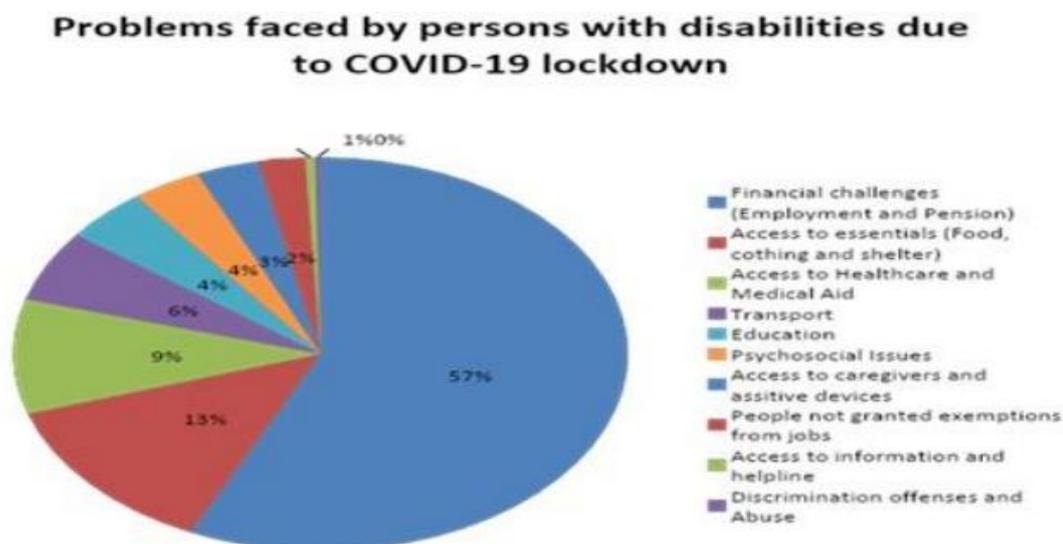
A survey was conducted by the National Centre for Promotion of Employment for Disabled People (NCPEDP) of 1,067 individuals with disabilities (73% male and 27% female)³².

³¹ Murthy Venkata S Gudlavalleti, *Access To Health Care And Employment Status Of People With Disabilities In South India, The Side (South India Disability Evidence) Study*, 14 BMC PUBLIC HEALTH, 14 1125 (2014).

³² NATIONAL CENTRE FOR PROMOTION OF EMPLOYMENT FOR DISABLED PEOPLE (NCPEDP)

Among those facing particular difficulties, 57% said they were going through a financial crisis, 13% said they were having trouble getting rations, and 9% said they were having trouble getting healthcare and medical aid, Figure 1 shows the problem faced by the PwDs due to Covid-19 lockdown.

Fig: 1



Source: National Centre for Promotion of Employment for Disabled People (NCPEDP)³³

V. INTERNATIONAL RESPONSES DURING COVID-19 FOR THE PROTECTION OF PERSONS WITH DISABILITIES

The Committee on the Rights of Persons with Disabilities is deeply concerned about the COVID-19 pandemic's devastating effects on people with disabilities. The COVID-19 pandemic has revealed that States Parties have not fully implemented the Convention on the Rights of Persons with Disabilities (CRPD). It has brought to light the increased vulnerability and risks that people with disabilities face as a result of long-standing discrimination and inequality.

The San Marino Republic's Bioethics Committee issued COVID-19 triage guidance, which prohibits discrimination based on disability: "The only parameter of choice, then, is the proper application of triage, which respects every human life and is based on clinical appropriateness and treatment proportionality criteria. Any other criterion for selection, such as age, gender, social or ethnic affiliation, or disability, is unethical because it would result in

Locked Down and Left Behind A Report on the Status of Persons with Disabilities in India During the COVID – 19 Crisis, (2020)

³³ *Id*

a ranking of lives that are only ostensibly more or less worthy of being lived, a violation of human rights.³⁴

The US Department of Health and Human Services' Office for Civil Rights issued a bulletin to ensure that authorities do not discriminate against people with disabilities, stating that "persons with disabilities should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person's relative "worth" based on the presence or absence of a disability."³⁵

The UAE has launched a national program to test people with disabilities in their homes, and as of mid-April, had completed 650,000 COVID-19 tests on people with disabilities³⁶.

In the Philippines, the Commission on Human Rights has released information to assist health agencies in tailoring public messages for vulnerable groups in society, such as children and people with disabilities.³⁷

The COVID-19 Disability Advisory Group was formed in Canada with the participation of people with disabilities and their representative organizations to advise the government on disability-specific issues, challenges, and systemic gaps, as well as strategies, measures, and actions to be taken.³⁸

VI. GOVERNMENT OF INDIA INITIATIVES FOR THE PROTECTION OF PEOPLE WITH DISABILITIES

In India, the pandemic poses a threat to more than 26.8 million disabled people. The state's response must be focused on ensuring that their right to equal healthcare is fully implemented. Long-term neglect and inaction in the areas of disability rights and public health, on the other hand, have posed enormous challenges in ensuring such equal protection during Covid-19. It also announced a \$1,000 ex-gratia for poor senior citizens, widows, and PWDs to be paid over three months in two instalments. The ex-gratia amount is "very meager" and "grossly inadequate," according to the National Platform for the Rights of the Disabled (NPRD). Because half of the disabled lack a disability certificate, they are unable to

³⁴ NATIONAL BIOETHICS COMMITTEE, <http://www.sanita.sm/on-line/home/bioetica/comitato-sammarinese-di-bioetica/documents-in-english/documento2116023.html> (last visited Jun 1, 2021)

³⁵ BULLETIN: Civil Rights, HIPAA, and the Coronavirus Disease 2019 (COVID-19) (March 28, 2020) <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf>

³⁶ KHALEEJ TIMES, *Combating coronavirus: UAE launches home testing programme for people of determination*, (April 13, 2020, 12.12 a.m. <https://www.khaleejtimes.com/coronavirus-pandemic/combating-coronavirus-uae-launches-home-testing-programme-for-people-of-determination>

³⁷ OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), *Covid-19 And The Rights Of Persons With Disabilities: Guidance* (April 29, 2020)

³⁸ GOVERNMENT OF CANADA *Backgrounder: COVID-19 Disability Advisory Group* <https://www.canada.ca/en/employment-social-development/news/2020/04/backgrounder--covid-19-disability-advisory-group.html>

participate in government programs.³⁹

The government's response must focus on ensuring that their right to equal healthcare is fully implemented. Long-term neglect and inaction in the areas of disability rights and public health, on the other hand, have created enormous barriers to ensuring such equal protection during Covid-19. The World Health Organization (WHO) stated that additional considerations from governments, healthcare systems, disability service providers, institutional settings, communities, and actors are needed for people with disabilities in light of the COVID-19 pandemic.⁴⁰

The uncertainty surrounding the disbursement of financial protection schemes for people with disabilities has exacerbated their already precarious financial situation. At this point, barriers to healthcare should be identified, facilities should be made more affordable, and financial assistance should be reserved for people with disabilities to protect them from the coronavirus and its aftermath.

Comprehensive Disability Inclusive Guidelines for Protection & Safety of Persons with Disabilities (DIVYANGJAN)

During COVID 19, the Central Government released the "Comprehensive Disability Inclusive Guidelines for Protection and Safety of Persons with Disabilities (Divyangjan)" in late March. The Guidelines direct state governments to take certain "general action points instructing the State Governments to:"⁴¹

- ensure that information is accessible
- allow caregivers to be exempt from lockdown restrictions;
- exempt employees with certain disabilities from performing essential service work;
- provide essential services to disabled people who have been quarantined;
- Prioritize the treatment of people with disabilities.
- Among other things, train emergency service providers on the needs of people with disabilities.

On the other hand, due to the discretionary nature of these guidelines, their implementation

³⁹ Baikunth Roy and Santosh Mehrotra THE HINDU BUSINESS LINE, *Covid-19: Implications for the disabled* <https://www.thehindubusinessline.com/opinion/covid-19-implications-for-the-disabled/article31250730.ece> (Apr. 03, 2020)

⁴⁰ WORLD HEALTH ORGANIZATION, *Disability considerations during the COVID-19 outbreak*, <https://apps.who.int/iris/rest/bitstreams/1277373/retrieve> (last visited May 31, 2021)

⁴¹ Varsha Iyengar, Oxford Human Rights Hub, *Covid-19 and Rights of Persons with Disabilities in India* OXHRH J (May 11, 2020) <https://ohrh.law.ox.ac.uk/covid-19-and-rights-of-persons-with-disabilities-in-india/>

has been insufficient.

Despite the fact that the COVID-19 pandemic was declared a national disaster, the National Disaster Management Guidelines on Disability Inclusive Disaster Risk Reduction 2019 were not implemented, resulting in wide disparities in how the pandemic was handled across states. The government has already begun the process of simplifying the procedure for obtaining disability certificates by introducing the Unique Disability ID, which can be applied for online, in a move that has provided some relief. There have been reports of some states taking positive steps.⁴² Kerala has kept lists of disabled people at the municipal/panchayat ward level, allowing the government to use decentralized governance structures to reach out to people with disabilities, provide cooked food and dry rations, and advance pension payments and financial aid to students with disabilities. Kerala and Nagaland have also taken proactive measures to ensure that COVID-19-related information is easily accessible. Nagaland also has a dedicated helpline for people with disabilities, which includes a video call facility for those who are deaf or hard of hearing.

VII. GOVERNMENT OF INDIA NEEDS TO BE MORE PROACTIVE: SUGGESTIVE MEASURES

COVID-19 is more likely to infect people with disabilities, and barriers to accessing health services, including testing, are exacerbated during the crisis. Lockdowns can limit access to essential goods and medicines, as well as access to support services. Persons with disabilities are disadvantaged by the disruption of broader health services because they may require more frequent access due to underlying health conditions.⁴³ The pandemic provides an opportunity for the government to refocus its health-care strategies on people with disabilities. Some of the suggestions are as follows:

- Ensure that public health information is easily accessible. A proper response necessitates taking steps to ensure that information is readily available, up to date, and keeps pace with the rapidly changing knowledge demonstrated during the pandemic.⁴⁴
- Implement COVID-19 protective measures, including access to appropriate WASH facilities that allow for frequent hand washing, as well as the targeted provision of protective measures for those who provide support to people with disabilities at home or in institutions.

⁴² Divya Goyal, People with disabilities during the COVID-19 pandemic in India, OBSERVER RESEARCH FOUNDATION (Nov 28, 2020) <https://www.orfonline.org/expert-speak/people-disabilities-covid19-pandemic-india/>

⁴³ WHO and World Bank, World Report on Disability (2011).

⁴⁴ UNITED NATIONS, *Shared Responsibility, Global Solidarity: Responding to the Socio-Economic Impacts of Covid-19*, (March 2020)

Personal protective equipment (PPE) for people with disabilities should be tailored to their specific impairment. Deaf and hard of hearing people, for example, will benefit more from face shields because masks make it impossible to read lips or see facial expressions.

- Ensure that services are easily accessible. Transportation to healthcare facilities, access to sign language interpretation in hospitals, and procurement of goods, medicines, and services are all examples of measures that need to be put in place to ensure that people with disabilities have timely access to health services. Access to essential health services, such as sexual and reproductive health, is required—for example, telehealth programs must be accessible to people with disabilities who require different modes of communication.

- Ensure that scarce medical resources are not allocated in a discriminatory manner. It is critical to reduce the risk of discriminatory resource allocation decisions that disadvantage people with disabilities by implementing ethical principles⁴⁵ that prioritize treatment for people in vulnerable situations.⁴⁶ On May 20, 2021, the Delhi High Court requested responses from the Union of India and the Delhi Government in a Public Interest Litigation seeking direction to treat people with disabilities as a priority and to make special provisions for them when administering the Covid-19 vaccine.⁴⁷

- Persons with disabilities should be included in mental health interventions. Anxiety, lockdowns, isolation, and information consumption, as well as the loss of livelihoods and support systems, all affect people's mental health, including people with disabilities. Physical distancing measures that restrict visitors and group activities in institutions can negatively affect physical, as well as mental, health and well-being, as documented in the policy brief on the impact of COVID-19 on older people. Mental health and psychosocial support must be accessible to people with disabilities without discrimination.⁴⁸

- The coronavirus is a serious threat to people with disabilities. People with visual impairments rely on "touch functions" for mobility and work, which increases their infection risk.

- The deaf have been unable to communicate due to a lack of Indian sign languages and communication equipment. The Ministry of Social Justice and Empowerment requested that

⁴⁵ R. D. Truog ET, AL., *The Toughest Triage — Allocating Ventilators in a Pandemic*, N Engl J Med (2020).

⁴⁶ WHO, *Guidance for Managing Ethical Issues in Infectious Disease Outbreaks*, (2016).

⁴⁷ Mohd Faizal Nawaz vs GNCTD

⁴⁸ UNITED NATIONS, *Policy Brief: Impact of COVID-19 on Older Persons*, (May 2020)

departments work with States/UTs to make Covid-19-related information available in audio formats and Braille for people who are blind or visually impaired.⁴⁹

- Moderately impaired workers account for a large percentage of the workforce. They have migrated to various parts of the country in search of work, as have the majority of informal workers. These people are terrified and desperate to get back home. As a result, priority must be given to rehabilitating stranded PWDs.

- PWDs may be eligible for special provisions under "Ayushman Bharat." PWDs with chronic illnesses are experiencing mental distress as a result of the fear that they will be unable to obtain groceries or medicine if supplies run out. Door-to-door delivery should be provided for free or at a reasonable cost. Direct cash assistance, as well as special provisions under the public distribution system (PDS) for PWDs, can be provided.

- Disabled people should have their own rehabilitation and quarantine facilities. When dealing with PWDs who are quarantined, health professionals may need special training.

- Beggars and the homeless make up a large percentage of PWDs. Contamination may be reduced if reasonable accommodations are made available. For example, PWDs and senior citizens in Australia have their own time slot in supermarkets.

- An official online portal may be established to provide PWDs with authentic information about the coronavirus crisis in regional languages. Many services that PWDs rely on on a daily basis have been halted. During the lockdown, the disabled should have access to aids and devices. Alternative provisions should be made for PWDs who do not have disability certificates so that they can continue to receive government services without interruption.

VIII. CONCLUSION

COVID-19 has triggered a human crisis of unprecedented proportions, affecting one billion people with disabilities. To get through the crisis, people with disabilities need an unprecedented response—an extraordinary scale-up of support and political commitment—to ensure that they have access to essential services, including immediate health and social protection services. Everyone will benefit from a disability-inclusive COVID-19 response and recovery. It will enable more inclusive, accessible, and agile systems capable of responding to complex situations, with priority given to those who are the most behind. It will pave the way for a more prosperous future for everyone.

⁴⁹ *Supra* note 33.

The COVID-19 pandemic provides an opportunity to transform and repair the cracks in our social structures, as well as to include communities that have previously been marginalized. People with disabilities, have long struggled to find flexible and work-from-home options, with little or no success. Within a few days of the pandemic, both public and private sector organizations made large investments in video-conferencing technology and software tools to make similar arrangements for their non-disabled employees. It is critical to recognize the significance of workplace accommodations in order to create more inclusive environments for all.

Similarly, universal healthcare cannot be achieved without the construction of accessible health facilities for people with disabilities, which, according to research, would improve overall health service quality. People with disabilities would have faced fewer difficulties during the pandemic if existing laws and policies had been properly implemented. This is an opportunity to learn from past mistakes and design a system that is more resilient and equitable.

In these COVID times, the Indian government and judiciary must recognize the needs of disabled migrant workers and devise specific measures to address their accessibility, mobility, and safety concerns. In this way, the Indian government can not only fulfil its national and international obligations to the disabled, but also its constitutional obligation to protect every Indian citizen's fundamental right to "Right to Life." Also, Government should come in to an alignment with all private sector health care providers and should instruct them to give all treatment which is required by the disabled at a humanitarian consideration rather than looking at the profitability of the healthcare industry.

The COVID-19 pandemic demonstrates that effective protection, response, and recovery efforts require that everyone be valued and included equally. To ensure that those most at risk, including people with disabilities, are explicitly included in public emergency planning, health response, and recovery efforts, immediate and decisive action is required. A human rights approach is critical to response and recovery efforts not only in the COVID-19 pandemic, but also to ensure that States act now to build equitable, sustainable, and resilient societies with the mechanisms to prevent and respond quickly to future public health emergencies, and to ensure that "no one is left behind."⁵⁰

⁵⁰ OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), *Statement on COVID-19 and the human rights of persons with disabilities*
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25942&LangID=E>