# Responses to Human Rights Council Resolution 37/22 on Article 26 of the CRPD

Submitted by: The Leprosy Mission Trust India (TLMTI)

Responses to Query 1

The Indian Government has recently enacted “The Rights of Persons with Disabilities Act, 2016” (hereinafter referred to as the RPD Act) and “The Mental Healthcare Act, 2017” (hereinafter referred to as the MHC Act) to realise its obligations under the UNCRPD and bring its existing laws on disability in harmony with the Convention. The RPD Act is a central legislation applicable to the whole of the country. The stated law provides a specific provision with regard to rehabilitation of PwDs.

Under Section 2 of the RPD Act definitions have been provided on a variety of terms. It is pertinent to mention here that for the purpose of the Act, PwDs have been divided into two main categories wherein only those with 40% and above disabilities are entitled to the benefit of the welfare measures and reservations under the law and certain extra measures are included for persons with high support needs. The definitions of the relevant terms for answering to the present questionnaire are as follows:

(l) “high support” means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy.

(r) “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

(s) “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.

(t) “person with disability having high support needs” means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support.

(za) “rehabilitation” refers to a process aimed at enabling persons with disabilities to attain and maintain optimal, physical, sensory, intellectual, psychological environmental or social function levels.

As can be seen, the RPD Act does not provide a specific definition of either the term disability or habilitation. In its preamble it recognises the core principles of the CRPD with regard to the respect for the inherent dignity and autonomy of the PwD, respect for their difference and acceptance as part of human diversity and humanity and respect for the evolving capacity of children with disabilities (CwDs). The only mention it makes of habilitation is along-side rehabilitation where it is laying down the responsibility of the Government to initiate or cause to be initiated research and development on these issues under section 29 of the RPD Act.

Under the new MHC Act, there is a clear recognition of rehabilitation requirements as a part and parcel of holistic mental healthcare, as per the definition of mental healthcare under Section 2(o) of the Act, which reads as follows:

"Mental healthcare" includes analysis and diagnosis of a person's mental condition and treatment as well as care and rehabilitation of such person for his mental illness or suspected mental illness.

It is relevant to mention here that the structure of laws on beggary in India has been such that it penalises beggary and creates a structure of prison like homes known a Beggary Homes for the detention of beggers in 23 States of India. Beggary laws directly impact the section of those disabled persons who survive on beggary due to abandonment, which primarily includes people affected by leprosy and psycho-social disabilities. The Only State to enact a law not criminalising beggary has been the State of Rajasthan, which bought out a law on the subject in the year 2012 titled as “The Rajasthan Rehabilitation of Beggars or Indigents Act, 2012”. The said law places a focus on rehabilitation of beggers and instead provides for Rehabilitation Homes, which have been described in the said law as ““Rehabilitation Home” means any institution established and maintained by the State Government or a recognized service organization for reception, maintenance, treatment, education, training to beggars or indigents under section 4” under Section 2(h). Though the Rajasthan law is far more progressive in terms of its structure in dealing with the issue of beggary it still provides for the segregation of persons on the grounds of leprosy.

Apart from this, at multiple levels there has been dialogue on the issue of beggary laws. Just few weeks ago the Delhi High Court in a landmark judgment[[1]](#footnote-1) ordered that The Bombay Prevention of Beggary Act, 1959, which has been in application in the Union Territory of Delhi shall be removed and has ordered the State Government to look into the rehabilitative needs of beggars. This is a very relevant move, as firstly it recognises that one ought not to be criminalised for being poor without having any-other means of survival than beggary. Secondly, it directly impacts sections of the disabled population, chiefly persons affected by leprosy and psycho-social disabilities, many of whom are surviving on begging, who then fall squarely within the ambit of the law.

Additionally, the Union Government has drafted “The Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016” (hereinafter referred to as Destitution Bill”) as a bill for application within States, sometime ago but the same is yet to be placed before the cabinet and Parliament for consideration and to be put through the process of being enacted as a law. As per the Destitution Bill, it defines the following terms under Section 2 as follows:

(4) “person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority.

(7) 'Rehabilitation Centre' refers to any institution or non-custodial home established and maintained by the State Government, Voluntary Organizations or any other implementing agencies which shall be certified/registered in such a manner as prescribed by the State Government for the purpose of this Act to provide protection, care, vocational training/skill development and other necessary rehabilitative services to the persons in destitution.

With regard to the coverage of services for habilitation and rehabilitation under the laws, schemes and programmes of the Government of India, the main legislation on disability, the RPD Act leaves it open on the economic capacity of the appropriate governments. Though, the RPD Act does not mention any specific services under habilitation, it provides for a section on rehabilitation and one on research and development where it mentions habilitation as well, in the following terms:

**Section 27**: (1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

(2) For the purposes of sub-section (1), the appropriate Government and the local authorities may grant financial assistance to non-Governmental Organisations.

(3) The appropriate Government and the local authorities, while formulating rehabilitation policies shall consult the non-Governmental Organisations working for the cause of persons with disabilities.

**Section 28**. The appropriate Government shall initiate or cause to be initiated research and development through individuals and institutions on issues which shall enhance habilitation and rehabilitation and on such other issues which are necessary for the empowerment of persons with disabilities.

As can be seen from a plain reading of the above sections, there is the intention to cover rehabilitation under the aspects of health, education and employment. However, there is no time period specification for the development of these services nor is there anything in the central government rules elaborating the nature and scope of this provision for its proper implementation. As of now, in the initial phases of the implementation of the law, it is hard to say how much commitment each State and local authority would be willing to put down for the purposes of rehabilitation of PwDs. As many State governments have as of yet not completed the initial task of creating the rules for the purpose of the implementation of the Act, in their levels of governance. Amongst the few that have, like the process being currently undertaken in the Union Territory of Delhi, the section on rehabilitation has not figured at all in the rules.

Another significant place where the need for rehabilitation has been acknowledged in the law is under Section 7 of the RPD Act on Protection from abuse, violence and exploitation by recongising the need to rescue, protect and rehabilitate such victims.

Along-side the legal regime, the Government post the enactment of the 1995 law on disability {The Rights of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995} assigned certain institutes as National Institutes and created some including CRCs to focus on the specific issues of disabilities[[2]](#footnote-2). These include:

1. Pandit Deen Dayal Upadhyaya Institute for the Physically Handicapped (IPH), New Delhi
2. National Institute for the Visually Handicapped (NIVH), Dehradun
3. Ali Yavar Jung Institute for the Hearing Handicapped (AYJIHH), Mumbai
4. National Institute for the Intellectually Disabled previously known as The National Institute of the Mentally Handicapped (NIMH), Secunderabad
5. National Institute for the Empowerment of Persons with Multiple Disabilities (NIEPMD), Chennai
6. Swami Vivekanand National Institute of Rehabilitation, Training & Research (SVNIRTAR), Cuttack
7. National Institute for Orthopaedically Handicapped (NIOH), Kolkata

Additionally, to address the specific issue of rehabilitation, the Government has created seven Composite Regional Centres for Persons with Disabilities (CRCs) at Srinagar (J&K), Sundernagar (Himachal Pradesh), Lucknow (U.P.), Bhopal (M.P.), Guwahati (Assam), Patna (Bihar), Ahmedabad (Gujarat) and Kozhikode (Kerala) to provide both preventive and promotional aspects of rehabilitation like education, health, employment and vocational training, research and manpower development & rehabilitation for persons with disabilities.

However, there remains the need to regularly access and modify the services regarding rehabilitation especially with reference to economic activities for people affected by leprosy, given that their individual physical conditions of deformities greatly impact their performance where there is irreversible loss of sensation.

1. The Indian Express, ‘Delhi High Court decriminalises begging in national capital’, <https://indianexpress.com/article/cities/delhi/delhi-high-court-decriminalises-begging-in-national-capital-5297464/> (last accessed on 18th August 2018) [↑](#footnote-ref-1)
2. <http://disabilityaffairs.gov.in/content/page/nationals-institutes-and-crcs.php> (last accessed on 31st August 2018) [↑](#footnote-ref-2)