**SAMARTHANAM TRUST FOR THE DISABLED**

**#39, 15th Cross, 16th Main, Sector-4 HSR Layout,**

**Bengaluru-560102, Karnataka, India.**

**Submission to:**

**The working group on the issue of discrimination against women and girls in law and in practice**

**September 10, 2018**

WE are a registered charity incorporated under Indian trust act 1872 on February 26, 1997 at Bengaluru, Karnataka, India. Majority of the present and founder members are persons with disabilities themselves and have been striving to promote effective and meaningful inclusion, holistic development, empowerment, promotion and protection of all human rights and fundamental freedoms of the most excluded and poorest of the poor sections of the society with a specific focus on persons with disabilities. We have at most honesty, humility and accountability in promoting gender equity and justice by ensuring the effective and equal participation and involvement of both women/girls and men/boys with and without disabilities in all the actions and processes at all levels. We are committed to demonstrate our primary accountability to the primary target group with whom we work and expressed the courage of conviction to take sides with them. We are sincerely practicing the principle of value for money. Though our focus areas revolve around inclusivity through education, sustainable livelihood, sports, arts and culture, we also have a vertical which thoroughly focuses on environmental initiatives with the goal of promoting livelihood for the disabled community.

**Vision:** “An inclusive society free from discrimination where persons with and without disabilities become contributing members, living with dignity and respect”

**Mission:** “Empowering persons with disabilities and most excluded sections of the society through development initiatives focusing on educational, social, economic, cultural and technological aspects”

We sincerely appreciate and whole heartedly welcome the initiative of the working group on the issue of discrimination against women/girls in law and in practice to submit the comprehensive thematic report on women deprived liberty to the 41st session of the Human Rights Council in June 2019. We admire the approach taken by the working group in gathering facts across the globe from different stakeholders through consultative process. After a thorough analysis and practical experience, the situation of women/girls of this part of the world is as follows:

We are an organisation of persons with disabilities and our main focus is on women/girls with disabilities and their situation with regard to deprivation of liberty in law and in practice is summarised with the key facts:

1. **Justice system:**

1. What are the main causes for women coming into conflict with the law and facing the associated deprivation of liberty, including pre-trial detention?Which are the groups of women who are most vulnerable and why? Please list the types of offenses for which women, or any particular group of women, aretypically charged with, including administrative offenses.

**Causes:**

1. Acute and chronic poverty leading to begging and sex work;
2. Drug abuse by girls on streets;
3. Theftand petty crime as a result of starvation;
4. Kidnapping and selling childrenon the command of child selling rocket;
5. Pimps managing brothels;
6. Women/girls with disabilities begging without the option of decent livelihoods;
7. Forced begging by women/girls with disabilities on the command of beggars rocket;

**List of vulnerable groups and type of charges:**

1. Trans gender for anti-begging and prevention of sex work both are illegal;
2. Waste/Rack pickers for petty or no crimes but construed as illegal activity;
3. Women/girls with blindness are found in brothels and who are misguided to get in to brothels which is a punishable crime;
4. Women/girls with intellectual and psycho social disabilities who roam around and the public spread the false news of dangerous to public who should be detained;
5. Women/girls with disabilities who are homeless and take shelter in a public place which is a punishable offence;

2. Please indicate if there are cases of women facing detention in relation to civil law suits and identify the particular groups of women mostly affected.

A. False charges by men on women/wife/daughter/relative for grabbing the property;

B. Destitute women cheated by her men counterpart in relation to her property;

C. Women with intellectual and psycho social disabilities cheated by their relatives on the basis of unsound mind and cannot manage property and cause danger to the public;

D. Accumulation of Disproportionate assets as against actual income;

E. False charges on not filing income tax returns;

F. Cheating of nonliterate people on the charges of fraud, breach of contract, and fail to fulfill contractual obligations;

G. Blind women are cheated by forcing her to sign the contract without reading the content of the same;

3. What are the main challenges for women’s access to justice, including, for example, the availability and quality of legal representation, the abilityto pay for bail, and the existence of gender stereotyping and bias in judicial proceedings?

A. Justice System is not accessible for women/girls with disabilities in any respect;

B. Police station is not barrier-free for women/girls with disabilities;

C. Police often hesitant to file complaint;

D. There is no support in the police station to write the complaint for women with blindness and nonliterate;

E. Blind women/girls are not considered as valid witness;

F. Court records are not in accessible formats so that blind women can read them;

G. There is no service of sign language interpreter to interpret between women/girls with deafness and the lawyer and judge;

H. Deaf women/girls are considered as mentally ill and do not considered as valid witnesses or complainant;

I. There is a strong bias within the justice system that blind women/girls cannot identify the accused;

J. It is difficult for women/girls with disabilities to get a council to argue the case;

K. Legal aid cells are not interested in taking up the cases of women/girls with disabilities;

L. It is difficult for women/girls with disabilities to get bail since they are from poor economic background and do not trust on their capacity;

4. What have been the main drivers for the increasing or decreasing of the female prison population in your country in the past decade? To what extentare non- custodial measures used, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for WomenOffenders (Bangkok Rules)?

**I. Increasing:**

A. Enhanced role of women/girls in economic activities which may lead to petty crimes or they are misused, trapped or misguided by the men counterpart;

B. Use of innocent women/girls by men to carryout criminal activities;

C. Increased flow of smuggling activities forcefully carried out by women/girls on the coercion of men rocket;

D. Increased cross border or within the country transportation of drugs for which women/girls are forcefully used;

E. Theft, fraud and petty crimes to combat poverty and starvation and hunger of the family;

Increased activities of sex work and police atrocities;

1. **Decreasing:**
2. Establishment of district and block women welfare and rehabilitation centres;
3. Constitution of national and state level commission on the rights of women;
4. Mass media awareness about the misuse of women/girls to commit crime by men counterpart;
5. Special legal aid cells for women/girls;
6. Establishment of Tribunals to address the issues within a short period of time;
7. Mutual agreement outside the court;
8. Enactment of progressive legislations such as “Domestic violence act”;
9. Increased role of women groups in educating women/girls about crime and their responsibility;
10. Increased rate of literacy among women/girls;
11. Increased number of women in the organised sector work force;

**II. Other institutions**

1. What other institutions outside the justice system exist in your country wherein women and girls are institutionalized on grounds such as care, correction,protection and prevention against potential harms, etc.? Please list the groups of women and girls who are most concerned in each situation.

1. Women/Girls in mental health institutions;
2. Destitute women/girls in rehabilitation centres;
3. Aged women in old age homes;
4. Orphan girls in orphanages;
5. Women/Girls with severe, multiple and profound disabilities in homes;
6. Women/girls with intellectual disabilities in rehabilitation centres;
7. Women with disabilities in working hostels;
8. Girls with disabilities in special schools;
9. Women/Girls who are cancer patients in care homes at the last stage of the disease;
10. Women/girls with affected by leprosy in leprosy centres;
11. Holcohalic women in de-addiction or rehabilitation centres;

2. Please explain the decision-making process for the institutionalization of women and girls in each situation, including the role of women and girlsthemselves in the decision on institutionalization. Please highlight any good practices in terms of enabling women to exercise agency within institutionalsystems, with due respect to their rights?

1. There is no role for women/girls to make decision in any aspect of life or happenings in the centre or institution;
2. The residents are compelled to follow the rules made by the institution in ages when the institution was established which may not be appropriate to today’s context;
3. In some institutions, depending upon the age and maturity of the residents, suggestions are taken in small matters such as food ETC.
4. The Decision of institutionalization of women/girls is generally involuntary in most of the cases;
5. In some cases such as aged women, girls with disabilities in special schools and so called sound mind somehow take voluntary decision still it is not fully voluntary;
6. There is an institution called Banyan, located in Chennai, South India, India which is committed to promote and protect the rights of women/girls with psycho social disabilities by enabling them to express their views and involve them in the decision making process right from treatment;
7. The other organisation, Parivar, confederation of the parents associations of children with intellectual disabilities which facilitates a group of persons/children with intellectual disabilities to make decisions on day to day matters;
8. There are examples where the parents of children with intellectual disabilities actively support their children to take age appropriate decisions;

**III. Forced confinement in private contexts**

1. What forms of forced confinement of women and girls exist in a private or social context sanctioned by family, community or group of individuals suchas abduction, servitude, guardianship and “honor” practices, trafficking, home detention, “witch camps”, widowhood rites, etc.?

1. Women with intellectual and psycho social disabilities even before and after attaining the stage of puberty are forcefully confined to their homes and they are not allowed to get out of the house. They are not taken to any public gatherings, ceremonies and functions. They are locked in the house with the apprehensionthat they might be subjected to rape which may result in unexpected pregnancy, a shameful act before the community to the family members.
2. Blind women/girls are also confined to their homes after attaining the stage of puberty with the fear of forced rape and unexpected pregnancy;
3. Women/girls with intellectual, psycho social disabilities and blindness are forced to undergo contraceptive operation or sterilization in the pretext of protecting the respect of the family and preventing unexpected babies;
4. The head of Blind and intellectually disabled girls is shaved since the family members cannot afford to spend that much time to comb their hair;
5. People chain their children with severe disabilities inside the house when they have to go for work;
6. People made fun, use abuse language, use derogatory terminology, snatch their assistive devices, medication, food, fluids, cloths and other essential materials of women/girls with disabilities;
7. Women/girls with disabilities are often experience exploitation, violence and abuse. Abuse includes, physical, emotional, mental, psychological and sexual;
8. Female Genital Mutilation (FGM);

2. Please identify the groups of women and girls who are most affected by these situations.

A. Women/girls with disabilities of all categories;

B. Transgender;

C. Ethnic minorities;

D. Street children;

E. Orphan;

F. Widow or single women;

G. Women/girls in conflict, disaster, natural calamities and humanitarian emergencies;

3. What is the role of law and policy (including customary law and authorities) in your country concerning these types of confinement?

A. De-jure aspect of law prohibits all such forced confinements but the defacto aspect of law is silent about these processes;

B. Customary law either silent or sometimes supports these kinds of forced confinement and not take affirmative action to oppose or prohibit such harmful practices which are the gross violation of human rights of women/girls;

**IV.Migration and crisis situations**

1. What are the specific risks of detention and confinement encountered by women on the move in the context of asylum seeking, internal displacement andmigratory processes?

1. Life threat and risk;
2. Atrocities;
3. Physical, sexual, mental, emotional and psychological abuse;
4. Lack of essential materials and lifesaving drugs;
5. Exploitation and violence;
6. Forced unwanted activities;
7. Insecurity;
8. Inaccessible internally displaced camps for women/girls with disabilities;
9. Forced and illegal imprisonment;

2. What is the policy relating to the administrative detention of women migrants including pregnant women and women with children?

There are policies in line with the convention on the rights of migrant workers but those policies are not practiced on the ground in letter and spirit.

For more details, contact:

Dr. Victor John Cordeiro

Head of Policy advocacy,

Samarthanam Trust for the disabled

Email: [victor@samarthanam.org](mailto:victor@samarthanam.org)

Mobile: +919448071644