Women with Disability & Indian Legal Framework Challenges and Opportunities

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ABSTRACT:

Disability is a complex social issue and it is increasingly becoming a major concern all over the world. The number of disabled people is increasing across the world due to various reasons. Disabled people comprise a significant minority in most countries and their number also constitutes one of the largest minorities in the world. Among countries with comparable levels of income, India has one of the more progressive disability policy frameworks. This paper focuses on state-level variations in outcomes for women with disabilities to provide an explanation for the contrast between the liberal laws on paper and the challenges faced by women with disabilities in practice. In this research paper the researcher want to give much emphasis on the various legal provisions and Laws available in our country and make a systematic study on how these laws have contributed towards the development of legal status of the disabled persons in India. They faced direct and indirect discrimination and were not able to enjoy the full spectrum of civil, political, social, cultural and economic rights. Whatever the perception of the society towards the women with disabilities may be, it has to be fundamentally accepted that disabled people are integral part of our society. Therefore to incorporate provisions regarding accessibility in legislations and to execute them is the need of the hour, including the removal of discriminatory provisions that are still prevalent in some legislation. However, laws and policies alone may not be enough. Public perception, attitude and awareness have significant role to play. There is a need for social change through public awareness. There should be endeavor for attitudinal changes in the sense of bringing a culture of belonging. The public in general may be empowered and educated to take action and advocate the human rights and fundamental freedoms of women with disabilities.

INTRODUCTION

The rights of women with disabilities (WWD) are one of most ignored issues in India. Women with disabilities are deprived of rights and privileges because of the existing social attitude towards them. Million people suffer from various disabilities, but still it is regrettable that such huge population is suffering each and every day due to improper care and treatment. In India a large number of disabled populations including women with disability have limited access to education and employment. In the families, they do not participate in the decision making process even in social gatherings.

About 2.2% of India's population—or 26.8 million people—live with a disability, according to the 2011 Census. Many believe this to be an under-estimation because the World Health Organization has estimated that 15% of the global population lives with a disability. Various research studies show that girls and women with disability face an additional risk of violence and sexual violence. There are some co-relating elements we find while studying disability issue. Lack of health care during childhood of a girl child is one of the main reasons for permanent disability.

Further, women with physical disabilities may find it more difficult to escape violence. Those who are deaf may not be able to call for help or easily communicate abuse. Women and girls with intellectual or psychosocial disabilities may not know that non-consensual sexual acts are a crime that should be reported. The stigma related to sexuality and disability compounds these challenges. Gender related violence and discrimination is also a cause and consequence of disability. Discrimination is often compounded for women on the grounds of gender, age and minority status. Gender related practices such as son preference, abandonment of the girl child, discriminatory feeding practices, child marriage, dowry are all gender related acts of violence that lead to mental, physical and psycho social disability. Moreover, Rape or sexual harassments are probably the most common forms of violence against disabled women in India. To add, physical assault by family members or violence by intimate partner is often not considered as a crime rather a day-to-day incident.

INTERNATIONAL NORMATIVE FRAMEWORK FOR WOMEN WITH DISABILITY

The intersection between the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), both address legal capacity, access to justice, equal recognition before the law, gender and disability stereotyping, state due diligence obligations, among other issues. CRPD Article 6 adopts a gendered lens-recognizing the multiple and intersecting dimensions of women's lives and Article 12 requires equal recognition before the law, or legal capacity. Article 13 includes the right to access to justice, requiring States to provide procedural and age-appropriate accommodations, to facilitate effective participation." CEDAW Article 15 requires States to ensure that men and women have equal access to the legal system, ensuring legal autonomy. Because women with disabilities have rights under both CEDAW and CRPD, State Parties have a due diligence obligation to afford them full and fair legal capacity, and access to the justice system. All of these articles, but particularly Article 6, can be used to explain why it is appropriate to pay particular attention to the human rights needs of women and girls with disabilities. This includes taking steps to ensure that women and girls with disabilities benefit from the protections of the CRPD on the same basis as other people with disabilities.

WOMEN WITH DISABILITY, UNCRPD AND LAW IN INDIA

The UN Convention on the Rights of Persons with Disabilities is a major landmark in the history of disability rights movement. This convention is a reflection of the readiness of the international community to recognize that disability is a human rights issue that requires deeper understanding and specific action to not to treat persons with disabilities as objects of charity in programmes and policies of countries.

The Government of India has signed and ratifies the convention. But to translate the rights as defined in the Convention into implementable rights, the laws in the country need to be harmonized and need to be

synchronized with the Convention. India has done a study to understand the Indian Laws from the point of view of the Provisions of the United Nations Convention on Rights of Persons with Disabilities (UNCRPD). It was proposed to examine the extent to which the rights of Persons with disabilities were recognized and measures & provisions that were in place in the Indian Laws in view of the ratification of UNCRPD by India. However 14 laws including the Constitution of India and the procedural laws, the disability sector laws and the laws related to women and children have been examined in detail and changes have been suggested therein.

This study is limited to examining laws and finding out their consonance or resonance with the provisions of UNCRPD. It does not provide for actual word-by-word examination and amendments in provisions.

Constitutional Provisions

The Constitution of India through its Preamble, seeks to secure to all its citizens; Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity. Part-III of the Constitution provides for a set of six Fundamental Rights to all the citizens (and in a few cases to non-citizens also). These include — Right to Equality; Right to Freedom; Right against Exploitation; Right to Freedom of Religion; Cultural and Educational Rights and Right to Constitutional Remedies but there is absence of special provision for women with disabilities. Due to which they are exploited at every front and stage. Law making bodies also struggles to formulate an effective law for them.

Further in The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999- The Government has established the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities

In 1987 Mental Health Act to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.

First time in India The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is a signatory to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, adopted at the meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002, convened by the Economic and Social Commission for Asia and Pacific at Beijing from December 01-05, 1992. In order to give effect to the Proclamation, It also defines "person with disability" as a Person, suffering from not less than forty per cent of any disability as certified by a medical authority. Since the subject "Relief of the disabled....." is covered vide Item No. 9 of the List II: State List of the Seventh Schedule of the Constitution, the Act was enacted under Article 253 giving power to the Parliament for enacting "Legislation for giving effect to international agreements" read along with Item No. 13

of the List I: Union List: "Participation in international conferences, associations and other bodies and implementing of decisions made thereat".

India has ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2007 that ensures access to justice for persons with disabilities. This includes appropriate special facilities for the disabled and other provisions mandated by the Rights of Persons with Disabilities Act, 2016, that protects all persons with disabilities from abuse, violence and exploitation. But there are implementation gaps, investigations showed.

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

In the RPWD Act, 2016, the list has been expanded from 7 to 21 conditions. PWD having high support needs are those who are certified as such under section 58(2) of the Act. The RPWD Act, 2016 provides that "the appropriate Government shall ensure that the PWD enjoy the right to equality, life with dignity, and respect for his or her own integrity equally with others." The Government is to take steps to utilize the capacity of the PWD by providing appropriate environment. It is also stipulated in the section 3 that no PWD shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim and no person shall be deprived of his personal liberty only on the ground of disability. Living in the community for PWD is to be ensured and steps are to be taken by the Government to ensure reasonable accommodation for them. Special measures are to be taken to ensure women and children with disabilities enjoy rights equally with others. Special measures need to ensure PWD are not deprived from their Constitutional rights. But there is absence of special provision for women with disabilities.

Police are not trained to handle exceptional cases

Under the Criminal Law (Amendment) Act, 2013, to support women with disabilities, the following accommodations were made: The right to record their statement with police in the safety of their home or a place of their choice, to have their statements to police and examinations videotaped, to be assisted by a special educator or interpreter when the complaint is being recorded, and exemption from the need to repeat the statement during cross-examination by the defense counsel.

Yet, only few police officers have the training or expert support needed to handle these cases, HRW found. In some cases, police excluded women and girls with disabilities from specific assistance guaranteed by the 2013 amendments because of survivors' inability to certify a disability. In other cases, police failed to include the necessary details in their First Information Report (FIR). Police also rarely provided information on the right to free legal aid or legal aid services to survivors or their families. It increases their trauma and leaves them helpless.

Compensation delayed, denied

Indian law and policies require state governments to facilitate compensation, including in cases where the offender cannot be traced or identified. Even in cases of extreme violence, trauma, and economic hardship—including childbirth following rape—women and girls with disabilities had trouble securing compensation. This is especially crucial for those living in rural areas and those who are vulnerable.

"India has taken important steps to reform the criminal justice system to include women and girls with disabilities, but our new research shows the need for action and implementation," said Nidhi Goyal, a disability rights activist and co-author of the report, in a statement. "The government should act promptly to ensure accommodations and other measures so that women and girls with disabilities are out of the shadows of justice." Women and girls with disabilities face discrimination and accessibility barriers both related to their disability and also related to their gender. Many programs meant to benefit women are inaccessible for women with disabilities. Meanwhile, programs meant to benefit people with disabilities may not meet the needs of women or girls with disabilities. Protecting the human rights of women and girls with disabilities may require using human rights instruments for people with disabilities in conjunction with human rights instruments for women.

Women with Disabilities as Witnesses.

The justice system often fails to see women with disabilities as competent witnesses, a result of damaging stereotypes, or difficulties in communication without accommodations, The general failure of society to see women with disabilities as sexual beings and the tendency to "infantilize" them, while on the other hand, seeing women with mental disabilities as hypersexual and lacking self-control, results in their complaints or testimony being disregarded. The mere fact that a woman has a disability, especially psycho-social or intellectual disabilities, or that she require assistive communication or accommodations, may result in the justice system viewing her as lacking credibility. Judges may require more corroborating evidence when the witness is a woman with disabilities than in other cases, and prior mental health treatment may be used to discredit testimony. The complainant frequently does not serve as sole witness against the accused. Women with cognitive disabilities may have more difficulty with long term memory or remembering the sequence of events, which may make them appear less credible. Paternalistic attitudes may cause the legal system to view them as too fragile to withstand rigors of examination.

Discriminatory Termination of Parental Rights.

Stereotypical views of women with psychosocial, intellectual or physical disabilities as "unfit" mothers may result in termination of parental rights by social service agencies or through divorce and child visitation and custody proceedings, especially when the other parent does not have a disability, Fear of women with disabilities as parents persists, although evidence demonstrates that parents with disabilities are no more likely to maltreat children, or to raise so-called "defective" children than non-disabled parents. Statutes in many countries on termination of parental rights, child custody and divorce include disability-related grounds for termination of parental rights or loss of custody, and may emphasize and focus on disability status rather than actual parenting skill or behavior, implicitly equating parental disability with parental unfitness. Because of such legal definitions and societal prejudices, mothers with disabilities may be subjected to greater scrutiny by social service agencies than non-disabled women. Fear of being incorrectly perceived as an unfit mother by a court on the basis of disability, and the breakdown of their relationship with children, has frequently discouraged mothers with disabilities from separating from an abusive partner. It forces her to stay with the accused through her life bearing trauma and pain. A woman with cannot be denied from her parental right just because she is disable.

Violence through the Legal System.

Violence against women with disabilities occurs in the home, community, perpetrated and/or condoned by the state and private institutions, and in the transnational sphere. Forms include physical, psychological, sexual, financial, entrapment, degradation, neglect, trafficking, detention, denial of health care, forced sterilization and psychiatric treatment, among others. Women with disabilities are more likely to experience violence than non-disabled women, over a longer period, resulting in more severe injuries. Their abuser may also be their caregiver; someone relied on for care or mobility. In various ways the justice system itself (and therefore the state) perpetrates and/or condones the violence through various barriers.

Although there is a world-wide trend towards women with disabilities attempting to establish their own identity in this complex society, their condition remains very different in the developing countries particularly, India. The plight of women with disabilities is very depressing as they face a triple handicap and discrimination due to their disability, besides the gender issues. Violence against women with disabilities can range from neglect to physical abuse to denying them even the traditional roles of marriage and childbearing. Physical violence from the family member, from partner and from the closed one leaves the victim in severe trauma and they finally commit suicide.

BARRIERS BETWEEN WOMEN WITH DISABILITY AND ACCESS TO SERVICES

Women and girls living with disabilities often face additional marginalization in their experiences of abuse as well as specific barriers to accessing services, due to: economic and/or physical dependence on the abuser, which challenges efforts to escape (particularly within institutional settings); suffering from forms of abuse specific to women living with disabilities (e.g. withholding of medications, orthotic

equipment, and/or the refusal to provide personal care), which are less-documented and may not be explicit within legal definitions of abuse; lack of or limitations in physical accessibility of shelters for women with disabilities; perceptions by service providers that they cannot provide services for women with disabilities given their resource or capacity limitations; hotline or shelter counsellors who do not have knowledge of disability-related issues; lack of programming informed by and implemented in consultation with women with disabilities or misinterpretation of their needs in escaping and overcoming the abuse they have experienced; gaps in collaboration between disability organizations and service providers supporting survivors, as well as assumptions by each group that survivors are served by the other; low sensitivity among law enforcement personnel or other service providers, who may not inquire about abuse by caretakers, or disregard reports from women with speech/communication or motor coordination disabilities (e.g. cerebral palsy), assuming they are intoxicated or are not serious in their claims; and biases among judicial personnel and courts, who may provide preferential treatment to the abuser in child custody due to the victim's disability.

Barriers to employment

Women with disabilities make up only 1.5 percent of the workforce, despite being 4 percent of the overall population. Women with disabilities face both stereotypes about people with disabilities in the workplace and women in the workplace. Both women and persons with disabilities are generally viewed as less capable in the workplace, making them less likely to be hired or promoted. Whereas, there is provision made by the government that the person with disabilities will not be dined from their promotion in their tenure of service. There are also many barriers beyond attitudes and stereotypes, including work spaces that are not physically accessible and policies that are unfriendly to persons with disabilities. Without reliable employment in accessible spaces, women with disabilities are forced to rely on government support, keeping them impoverished.

High rates of abuse and violence

Women with disabilities are particularly vulnerable to interpersonal violence and exploitation, and experience violence at higher rates than women without disabilities. Resources intended to help victims of interpersonal violence may be less accessible to women with disabilities, or they may not be aware that these resources exist. Doctors and other care professionals may be less likely to recognize abuse common among women with disabilities, such as withholding needed care, stealing money, or verbal abuse based on the victim's disability. All of these make women with disabilities more vulnerable to interpersonal violence, which can result in poverty for women.

Lack of reliable and efficient transportation

Persons with disabilities often have difficulty accessing reliable and efficient transportation. Although communities may provide specialized transportation, these options often take a great deal of time and planning in order to use them. Without reliable transportation, it is more difficult to hold a job, to attend medical appointments, and to run errands that are necessary to care for one self. To make matters worse, women with disabilities are frequently sexually assaulted by transportation workers, making transportation more fraught for women with disabilities. All of these can exacerbate poverty for women with disabilities. The means of transportation for the disabled person is also expensive and they cannot afford to buy it, the condition is even worse in rural areas. It's like dream for the women and girls to own one, who is fully dependent on other for their survival.

Greater medical expenses

Persons with disabilities often have higher medical expenses than other members of the population. Medical expenses are one of the leading causes of poverty in the United States. Women with disabilities have difficulty escaping poverty, due to overwhelming medical bills. They depend on their near ones to bear the expense, who in turn exploit, abuse and discriminate them. The medical expense and cost of various laboratory tests are very expensive.

Lack of appropriate, quality education

Many persons with disabilities do not receive appropriate education. Their educational opportunities are often limited by others perceptions of their abilities, rather than their actual abilities. This is especially true for persons with intellectual disabilities. Without education to prepare them for the workplace, girls with disabilities are less likely to obtain secure jobs that pay well enough to lift them out of poverty.

Poverty among women with disabilities is concerning, and requires programs focused specifically on alleviating poverty among women with disabilities, rather than just persons with disabilities or women. There are unique issues that women with disabilities face which must be addressed. The fact that the economy improved and poverty rates decreased for women as a whole, yet remained the same for women with disabilities, tells us there's a long road ahead to address the needs of this specific population.

Gender-Based Violence: Women and girls with disabilities are particularly vulnerable to abuse. In Orissa, India found that virtually all of the women and girls with disabilities were beaten at home, 25% of women with intellectual disabilities had been raped and 6% of women with disabilities had been forcibly sterilized.

Rule of Law: Legal barriers exist for women with disabilities that hamper their right to marry and found a family. Consent for marriage must be given "freely and voluntarily". However, consent is not considered valid

when either party has a mental disability based on the assumption that he or she cannot fully understand the nature of the ceremony.

HIV/AIDS: A recent World Bank study states that women with disabilities are at a higher risk of obtaining HIV/AIDS due to lack of awareness and lack of access to traditional HIV/AIDS programs. Furthermore, the folk belief that individuals with sexually transmitted diseases, including HIV/AIDS, can rid themselves of the infection if they have intercourse with a virginand poses a particular risk for disabled children due to the mistaken belief that individuals with a disability are sexually inactive – hence virgins.

Human Trafficking: Women and girls with disabilities are at risk of being trafficked and forced into prostitution. In Thailand, for example, UNICEF reports that proprietors of houses of prostitution have specifically sought out deaf girl children and adolescents, with the idea that such young people will be less able to communicate their distress or find their way back home in a world where neither their customers nor their employers or fellow sex workers are able to speak sign language. In Taiwan, a recent study found that the proportion of child prostitutes who had mild developmental disabilities was six times greater than what might be expected from the incidence in the general population.

Physical Barriers: Physical barriers exist that prevent women and girls with disabilities from receiving various services and participating in international development programs. For example, a recent survey in South Africa has found that the services for battered women, with a few exceptions, are generally not accessible or appropriate to the needs of women with disabilities.

Attitudinal Barriers: People with disabilities often face stigmas and exclusion resulting from limited knowledge and understanding of the causes of disability. For example, in India, women with physical disabilities are not eligible to receive reproductive health services because they are considered to have no marriage prospects.

Organizational Barriers: Projects are often implemented without adequate consultation from people with disabilities or the disabled community, which can result in programs that are not accessible or discriminate against people with disabilities.

Physical access to the facility and procedures that are sensitive to the needs of women with disabilities are very limited. Policy exceptions to allow for service dogs, interpreters and personal care assistants as well as personal attendant services and independent living support, among others. Specialized information and referrals, which involves asking affected women the type of information they would like to receive; the settings and format that such information should be available; and how they would like to receive support services. 24-hour access to transportation, interpreters, and assistance with

communication (e.g. listening devices, real-time captioning, and readers). Training for staff working in disability services to understand issues of gender-based violence, and to monitoring risks and responding to victims. Beyond general awareness of the issue, this may include helping caretakers to develop specific skills, such as identifying signs of trauma or responses to trauma (which might be otherwise associated with aggression). Support access to special legal protection against abuse, for example, in cases of dependence on home caregivers or institutions. Consideration should also be given to economic and financial interventions to promote women's independence and self-efficacy, which may involve credit schemes, entrepreneurial skills training and advisory services for women to develop niche markets, where feasible.

CONCLUSION

Discriminations with women because of their disability should be considered as heinous crime. The physical and mental suffering caused due to their disability is dismayed threat to their existence. The trauma and pain suffered by these women are beyond imagination. They can't narrate their suffering and agony. They feel deserted and deprived of their basic fundamental right which The Constitution of India has vested to its every citizen. Serious adherence and formulation of laws in accordance with Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)can lead to some change in the living condition of these women. Mere drafting and formulation will not ease their agony. Implementation of the rules and laws at the each level of our society will only make some difference. Police organization should report immediate FIR and execute adherent action against accuse. A separate and effective body be established, which should expedite all pending legal case. A separate and sole helpline number reserve for the PWD to be made available which encompasses appropriate way to communicate according to their disabilities. Lack of awareness regarding their rights, various Government schemes, grants, compensations, reservation in jobs, and various opportunity for self- employment amongst the women with disabilities hinders their path for social and economic development. Society should be made aware that these people are also human being and they equal right as same as them. People and society should be made aware of the chastisement and consequences of any type of abuse caused or incurred. Today technology has created a new virtual world of digitalization, despite of such advancement these people are left far behind. Connecting them with these upgraded technology will prove fruitful. They will feel connected and looked after.

Social injustice like forced or non-consensual sterilizations must be criminalized. Such intrusive surgeries amount to a violation of the right to life and physical integrity. The victim of forced sterilisation must be duly

compensated. Labour laws should be amended to provide for flexible working hours and leave for parents of children with disabilities or care-givers of other disabled family members. Liability must be imposed on day care centres, day schools, government or private institutions including hospitals that attempt to or commit non-consensual sterilisations or do so without having obtained the informed consent of the disabled patient.

There is also a need to closely monitor the condition of State-run homes housing persons with disabilities to ensure that their rights are not being infringed upon. Instead of the courts, a statutory body can be constituted to consider the decision to sterilize made by parents or State institutions. The authority must comprise medical experts, human rights activists, lawyers, and experts having at least 10 years of experience in dealing with mentally disabled persons, psychologists and teachers of special schools. By engaging women with disabilities and their advocates to better understand their specific experiences and needs, shelter service providers can work to reduce barriers to access and improve service delivery for women with disabilities.

RECOMMENDATIONS

- All persons with disabilities are entitled to human rights and their inherent dignity must be respected at all times.
- Disability must be added to the list of grounds on the basis of which discrimination is impermissible under Article 15 of the Constitution.
- By way of legislation, we should not merely declare rights and entitlements but stipulate in detail the
 mechanisms by which the rights can be realised.
- Right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment.
- Right against forced or non-consensual sterilisation or without informed consent.
- Right to be protected against all forms of violence, whether in private or public, and sexual harassment at workplace.
- Right to found a family.
- Right to reproduction.
- Right to adequate protection from surgical or drug trial interventions, especially in case of institutionalised women.
- Right to approach the court of law, directly or through a friend or institution, for a violation of any of the above-mentioned rights.

• Right to accessible legal mechanisms of seeking remedies for violation of rights.

SUGGESTIONS

- Self-help groups of disabled women need to be organized. These women are to be made aware of the rights through training in self-advocacy.
- Rights of disabled women should feature in the mainstream women's movement.
- Governments should frame policies catering specifically for women with disabilities.
- Training for women with disabilities needs to be geared towards developing a positive self-concept and self-image. They are to be empowered to recognize that they too are contributing and responsible members of society.
- Provide adequate assessment of survivors, with particular focus on the socially-constructed barriers and discriminatory attitudes affecting their experiences, as part of their disability-related issues. Services should be designed to be relevant and accessible to women with diverse disabilities.
- Develop policies, procedures and budgets written to specifically include the issue of provision of services to women with disabilities who have experienced domestic violence, sexual assault or other forms of abuse. Such mechanisms ensure women with disabilities can access quality services which are integrated in the agency's operations rather than receiving ad hoc services which rest on the particular service provider's knowledge of or ability to address the intersections of abuse and disability.
- Ensure that staff are trained to recognize and effectively respond both to areas of need related to the disability, and to physical and sexual trauma (such as integrating disability-specific concerns related to personal care attendants or abuse related to neglect into risk assessment and safety planning). This should include skills for both responding to survivors and conducting effective outreach to women with disabilities.
- Raise awareness of the issue in the public discourse, which is equally important to help women and others identify experiences of abuse and community resources available to survivors. This is also critical to help shift some of the stigma and attitudinal barriers experienced by women.
- Provide increased centralization of information, which can provide clarity on the linkages between disability and relevant survivor services, and specific contacts who can speak to both issues. Such information should be accessible through a variety of public spaces in the

community (bulletin boards, health care facilities, police departments, victim advocate offices, etc.) and utilize television, radio and other mass communication channels.

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