

Procedural Protection to Women with Disabilities

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Abstract

Women with disabilities in India experience multiple and intersecting forms of discrimination arising from gender, disability, age, poverty and social exclusion. These disadvantages restrict their access to education, employment, healthcare, reproductive autonomy and the justice system, while also increasing their vulnerability to violence, exploitation and abuse. The article evaluates procedural protections such as recording statements at accessible locations, providing interpreters and special educators, using videography and adopting suitable communication methods during investigation and trial. It highlights significant gaps in implementation, including inadequate punishment, limited institutional accessibility, insufficiently trained police officers, prosecutors and judicial officers, poor appreciation of evidence given by women with intellectual or communication disabilities, and the absence of reliable disaggregated data. It also considers reproductive rights and the need to protect women with disabilities from forced sterilisation, sexual violence and denial of informed decision-making.

1. Introduction

Women with disabilities in India, face many barriers in education, employment access and enjoyment of rights. They are not a homogeneous group. It is highly necessary that the issues relating to women with disabilities have to be addressed properly, so that they can have substantive equality and prohibition of discrimination against them. Women and girls with disabilities face marginalization, environmental and attitudinal barriers resulting in exclusion and low economic and social status. They are more prone to harassment and violence. The discrimination meted against them leads to denial of opportunity to access to education, employment, health services, including sexual and reproductive health and dissemination of knowledge about these rights. This creates an invisible wall which restricts their participation in the society. So for avoiding discrimination the stereotypes of social, political and cultural aspects have to be crushed upon, which place obstacles in the enjoyment of rights of women with disabilities. If they are not able to enjoy the right to legal capacity, or reproduction, they will be more prone to violence. So women with disabilities have to be protected against discrimination. Women with disabilities are facing twin prejudice, women as well as disabled. If the lady is aged, she will be facing triple prejudice, of aged, disabled and women. So much effort has to be adopted to make them enjoy their rights in its fullest form.

Women are considered to be the weaker sections by the legislature and many rights had been given to them through a number of enactments. In India, women and girls with disability constitutes

44.1% (1.18 crore) of the total disabled population.¹ In the total population, the male & female population are 51% and 49 % respectively.² The percentage of disabled population among males and females are 2.41% & 2.01% respectively.³ The number of disabled male is higher than female population as far as all India is concerned. The percentage of female SC & ST are 2.2% and 1.92% respectively.⁴ The total disabled population during 2001-11 is 22%, whereas female disabled persons constitute 55% in urban areas.⁵ 20% of the female disabled population has disability in seeing or hearing, 18% disability in movement & 8% have multiple disabilities.⁶ 23% of female disabled are elderly persons. 45% female disabled are literates, whereas 62% of male disabled populations are literates. So the female disabled persons are more illiterate than men. Among female population 55% are illiterates, 9% of female population has metric secondary education, but not graduates. Only 3% are graduates and above. About 7.7% among female disabled literacy are graduates. Thus the illiterates among female disabled are high especially in rural areas (39%). Work participation rate of visually impaired male among disabled is 47.2% whereas that of female is 22.6% and hearing disabled is 53.9 and 25.8 respectively.

Analysis of UNCRPD with respect to women with disabilities

UNCRPD recognizes that women and girls with disabilities are often at greater risk, of violence, injury or abuse, mistreatment, both within and outside the home.⁷ The convention aims at bringing equality between men and women and acknowledges that women and girls with disabilities are subjected to multiple discrimination and aims at ensuring full and equal enjoyment of all human rights and fundamental freedom. The Convention presupposes the existence of inequality and discrimination against women and girls.⁸ It is the duty of the state party to take appropriate measures to ensure full development, advancement and empowerment of women, for the exercise and enjoyment of the human right and fundamental freedoms set out in the convention. The Convention makes it mandatory that the children and women with disabilities enjoy their life equally with others and that they have the right to freely express their opinions on all matters affecting them. Thus the drafters of the Convention felt the need for governments to initiate policy initiatives and more and more awareness campaigns, training and adaptation programmes has to be introduced with a state action. Only then the object of the Convention can be reached out.

The Convention requires the state parties to undertake to adopt, effective and appropriate measures for combating stereotypes, prejudices, and harmful practices relating to persons with

¹ Office of the Registrar General & Census Commissioner, Ministry of Home Affairs , Govt. of India, at <https://censusindia.gov.in/censusandyou/disabledpopulation.aspx> accessed on 12/10/2021

² Disabled persons in India- A Statistical Profile 2016, Chapter 3, Social Statistics Division, Ministry of Statistics and Programme Implementation, Govt. of India, available at www.mospi.nic.in/sites/default/files/publication-reports/Disabled_persons_in_India_2016.pdf on 25/11/2021

³ *Id*

⁴ *Id*

⁵ *Id*, fig 3.3

⁶ *Id*

⁷ UNCRPD, Preamble (q)

⁸ *Id* . Art.4.

disabilities, including those based on sex, and age, in all areas of life.⁹ This provision indicates the recognition of discrimination as a social concern and that it has to be addressed for achieving the goals set out by the conventions. It is highly necessary that awareness about the capabilities and contributions of persons with disabilities should be made out. The government is to take measures to prevent all forms of exploitation, violence and abuse by providing assistance and support to the persons with disabilities and their family members by educating them to identify instances of exploitation, violence and abuse. The state parties are thus required to ensure that the persons with disabilities are given enough protection and the service is gender sensitive. Thus the violence or abuse against women with disabilities has to be addressed and appropriate measures are to be taken by state parties, by enacting effective legislations and policies for identifying, investigating and prosecuting offenders of violence and abuse.

Women with disabilities have the right to enjoy highest attainable standard of health without discrimination on the basis of disability. Hence state parties are to provide affordable health care programmes to disabled persons as that of others. As per the convention, state is to provide health services for preventing or minimize future disability. The state parties are to take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, for persons with disabilities to decide freely and responsibly on the number of spacing of their children

Violence against Women with Disabilities

According to WHO, women and girls with disability are more prone to violence as against women without disability.¹⁰ Women with disabilities are subjected to emotional and verbal abuse with lasting psychological impact.¹¹ As per the report on violence against women with disabilities in India, women with disabilities are commonly subjected to forced sterilization and termination of pregnancy.

Similarly there are few gender based policies and laws that mainstream rights of women with disabilities in India. But there is no reliable data regarding the implementation of these policies in areas of education and employment.

To a certain extent, the lack of a correct picture is due to the lack of a precise and universally accepted definition and the lack of awareness and stigma attached to this vulnerable group, which resulted in non-reporting or under reporting of instances against them. In 2014, UN Special Rapporteur on violence against women, Smt. Rashida Manjoo recommended disaggregated data collection on not only disabled but also sex, age caste, religion, language and other relevant criteria.¹² Women with disabilities India Network had presented list of issues in their representation and in that they had stated the neglect of women with disabilities in policy matters and the lack of disaggregated data regarding this category.

⁹ *Id.*, Art.8(1)(b).

¹⁰ WHO, *Violence against adults and children with disabilities*, available at <https://www.who.int/disabilities/violence/en/> at 12/12/2021

¹¹ Nayreen Daruwalla, Shruthi Chakravarthy, et.al, *Violence against women with disability n India: A qualitative study*, 5/08/2013 , <https://journals.sagepub.com/doi/full/10.1177/2158244013499144>

¹² *Id.*

Even though UNCRPD addresses the issue of women with disabilities, no specific provisions were included for them till 2016, by enacting Rights of Persons with Disabilities Act (herein after referred as RPD Act). Earlier Persons with Disabilities Act, 1995 does not have any provisions for women with disabilities. In 2006, National Policy of persons with disabilities was formulated by the government of India for dealing with physical, educational and economic rehabilitations of persons with disabilities, focusing on women and children with disabilities.

Rights of Persons with Disabilities Act, 2016 brought about drastic changes towards achieving the goal set out by UNCRPD. The enactment addresses issues relating to discrimination, equality and violence and necessitates the existence and enjoyment of social, cultural, civil and political rights. In the RPD bill of 2014, there was no specific provision for women with disabilities. But during deliberations, the standing committee on social justice and empowerment recommended the inclusion of specific provision for women as there is multiple discrimination, against them. The State is to take necessary steps to ensure equality of enjoyment of rights by the women along with others.

Women and girls with disabilities face attitudinal and environmental barriers resulting in low economic and social status. They are prone to violence and abuse. As evident from the census of 2011¹³, the educated women with disabilities is very nominal. The barrier to access education creates an obstacle in participation on an equal basis with others. The issue of classroom accessibility is one main reason which prevents disabled girls from entering school. Another important issue is lack of disabled friendly toilets, which girls can use in schools. This aspect also stops the girls from attending schools.

For supporting gender equality and to empower all women and girls, UN had drafted a strategic plan 2018-21, providing 5 strategic priorities. A comprehensive policy or norms for providing gender equality and empowerment of women, is given much priority. Gender-based violence is a form of discrimination that severely limits women's ability to exercise equal rights and freedoms as that of males. The cultural or traditional practices carry a high risk of causing discrimination in the society.

POCSO ACT, 2012 also have provision for addressing sexual violence against children, especially disabled children. As an aftermath of Nirbhaya case, the amendment of Cr.P.C in 2013, brought about many substantial and procedural amendments with respect to sexual offences against women, including women with disabilities. Sec.376(2)(i) is incorporated which categorized sexual offences against physically or mentally disabled women as aggravated rape, which is punishable with 20 years of rigorous imprisonment or life time imprisonment. In POCSO Act, also aggravated sexual offence is provided, which clearly specifies that the protection is extended to women with disabilities.

Under the Juvenile Justice Act, 2015 also there are provisions for protection of women with disabilities.¹⁴ Thus double punishment is given to offender, if he is a doctor, in the course of examination.

The Rights of Persons with Disabilities Act, 2016, also provides for the protection against exploitation and violence and provides that if a person tries to outrage the modesty of a women with disabilities, if he is in a position to dominate her will. But the punishment given to the offender is very

¹³ *Ibid* note 6.

¹⁴ Juvenile Justice Act, 2015, Sec. 85.

meager, that is, fine with punishment of 6 months which can be extended to 5 years. The quantum of punishment provided is very much inadequate and the punishment is not proportionate to the offence committed. This provision does not adequately protect women with disabilities against sexual violence.

Similarly Mental Health Act 2017, does not specifically provide for sexual assault against women with mental illness.¹⁵ But the Act does not specifically address violence against women with disability, who is living anywhere other than an institution.

Procedural Protection to Women with Disabilities.

CrPC provide many procedural protections for women with disabilities, especially after Amendment Act, 2013. The law provides that the evidence should be adduced in the place where the women with disabilities are comfortable with. She should be provided with an interpreter if she needs one. The provision envisages that the offenders are not set free for want of evidence and for that the procedure is simplified for adducing evidence.

POCSO Act also provides for the inclusion of special educator or any person who is acquainted with the language and other communicative methods of women with disabilities. Many a times, the offenders are escaped due to insufficiency of evidences, as the statements given by women, who is following some special communicative methods, is not usually understandable to a person who is not familiar to her. This provision extends the protection by appointing a person who need not be a qualified one, so as to render justice equitably. There is also provision to video-graph the statement given to the magistrate and on the basis of this video-graph, she can be cross-examined during trial. But this provision also was not very helpful due to technical incompetence of courts. During this pandemic, the world around had seen that the court system had turned into online mode. More and more electronic equipment and internet facilities are available now and this makes a favorable environment for implementing this provision.

The Act does not specify provisions for giving training to judicial officers and prosecutors regarding the conduct of cases in which women with disabilities is involved. This makes it difficult for proper appreciation of the evidence given by disabled persons. A list of special educators should be maintained in courts dealing with such cases in which disabled person is involved, so that proper appreciation of statements is made possible. Even though provisions are made to record the statement of women with disabilities, its implementation is difficult. Only a very few police officials are specially trained to conduct cases in which women with disabilities are involved. When a woman with disabilities is placed as a witness in a trial, the value affixed to the statement given by her is not very promising. The lack of proper understanding of the questions put forward to them and the difficulty in interpreting her statements stand in the way of her becoming a worthy witness.

The issue of age of a mentally disabled person is an issue as the physical age of that person may be more than 18, whereas their intellectual age will be 5 or 6 yrs. Here a question arises as to how the age of that woman has to be calculated. Supreme Court is of the view that her physical age has to be

¹⁵ Sec. 20 (2) (k) , provides for protection from all sorts of violence, who is living in a mental health institution.

calculated.¹⁶ Actually, this provision requires reconsideration, as the mental element of the victim is very relevant. Hence it is necessary that special courts with special powers and procedure be laid down

Women and girls with disabilities are more prone to exploitation as the job participation of this category is much lesser than that of men and hence the women are more likely to live in poverty, making them more vulnerable to violence.

Sustainable Development Goal, No.16 provides access to justice for all persons. Women with disability are discriminated in society in exercising their rights by way of indifference and systemic failures. Only an effective justice system can make a change in their approach towards discrimination. Although anti-discriminatory laws have been implemented in all civilized societies these laws may tend to create inequalities in the society.¹⁷ Women with Disabilities living in remote areas finds it difficult to seek justice due to lack of accessibility to judicial systems.

Right of Reproduction

UNCRPD recognizes right to reproduction¹⁸ and access to sexual and reproductive health rights. For achieving these rights women with disabilities need to be provided with age appropriate , accessible information of sexual and reproductive health and to have recognition of their rights to have a sexual relationship, marriage, establish a family, enjoy reproductive health and physical integrity.¹⁹ Women with disabilities have got a right to get reproductive and family planning education, enabling them to exercise their rights provided by the Convention.²⁰ This right reiterates the medical model approach of disability. A medical view of sexual & reproductive rights focusing on violence and force and solving all these by sex education and medical assistance is expressed in the Convention. The right to reproduction is confined to the protection of persons with disabilities from forced sterilization and sexual abuse. Even though right to reproduce is addressed under UNCRPD, it does not find any reference of forced sterilizations and pregnancies. The special Rapporteur for the rights of disabled persons on sexual and reproductive rights had filed a report elaborately discussing, various sexual and reproductive health services, including contraceptive counseling, pre-natal care, post-delivery and post natal care, infertility treatment , safe abortions and prevention and treatment of various sexually transmitted diseases. UNCRPD does not as such address the issue of reproductive rights of persons with disabilities. Even though UNCRPD deviates from the medical model of disability to the social and human rights model, it encompasses the medical model as far as the right to reproduction is concerned. This view is adopted by pinpointing the issue of violence involved in the reproductive rights of persons with disabilities. The right of the persons with disabilities to have children was considered as a health issue rather than an issue where the person wants to live her life freely just like all normal persons.

¹⁶ *Eera v. State*, 2017(15) SCC 133.

¹⁷ SDG, Target No.10.3.

¹⁸ *Ibid* note 10., Art.23.

¹⁹ Schaaf.M, *Negotiating sexuality in the Convention on the Rights of Persons with Disabilities*, SUR International Journal of Human Rights,2011. Volume 8(14)113.

²⁰ *Id.*, Art10.

It is obligatory for the states to make appropriate information, on reproductive and family planning, available to women. The authorities have to ensure that the disabled women also have to enjoy their life to the fullest.

Conclusion

It is highly necessary that police officials should be given training to educate women with disabilities involved in the cases, about the right to have free legal aid and to seek legal assistance to their families. The state government is to take measures to facilitate compensation to disabled women victims, especially if the offender is unidentified. In cases in which violence against women with disabilities is involved, provision should be included to give counseling in cases of extreme trauma or sufferings. The counselors dealing with women and girls with disabilities have to be trained to meet the requirements of this vulnerable category. For the achieving the object of the Sustainable development goals, state governments should provide adequate awareness of the rights of the rights available to this vulnerable group. And for that purpose, awareness programs and drives can be conducted at Panchayat level by utilizing the students from schools and colleges. In that way, even women living in remote areas should be able to access justice. A deliberate involvement on the part of the government is necessary for bringing out equal participation in society.