

Violation of Women's rights with Disability treat as Criminal Offense (RPWD Act 2016).

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Abstract

The Constitution of India applies uniformly to every legal citizen of India whether they are healthy, disabled, Men or women. Part III, Article 12 to 35 of the Indian Constitution guarantees basic fundamental rights to its citizen. The Constitution secures to the citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity. Article 15 states, not to discriminate against any citizen of India including women with disabilities on the ground of race, caste etc. India is committed for the protection of these rights and dignity of women in including disabled women under legal frame work of various international convention such as Elimination of All Forms of Discrimination against Women (CEDAW) in 1993 and human rights instruments committing to equal rights to women. To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to women with disability. Comprehensive legislation is fundamental for an effective and coordinated response to fight against violations of the rights of women with disabilities. Appropriate governments have clear obligations under international law to enact, implement and monitor legislation addressing all forms of violence against women with disabilities. Over the past two decades, many States have adopted or revised legislation on violence against women with disabilities. However, significant gaps remain. The legislative provisions addressing to prohibit violence and discrimination against disabled women lacks adoption, enforcement and implementation. Domestic violence, sexual harassment, discrimination at work place, discarding - employment, promotion, education, basic health facilities and sanitation are various form violation of basic human rights for women with disabilities. These women with disabilities are dumped by their family members. Either they are left to wander on streets or they are forced into special institutions where they have to face physical and mental trauma. According to a report published by Commission for Human Rights in India found that disabled women who are forcibly admitted to government institutions and mental hospitals suffer grave abuses. In order to align national legislation with the CRPD, the government has introduced two bills, the Mental Health bill and the Right of Person with disability bill. However, they do not fully guarantee women and girls with disabilities the right to legal capacity and the right to independent living, as required by the treaty. There is an immediate requirement to address this grave discrimination and exploitation of the rights for women with disabilities. Violation of their basic fundamental rights should be treated and a heinous crime. It should be backed up by strong legislation and punishment so as to bring justice these especially abled women.

Keywords : Legislation CRPD, Constitution, disability

Introduction

The history of the Indian women's movement has been one of focus on poverty, caste, and employment, issues such as dowry and sati, population control and female feticide, sexuality, and domestic violence. Its agenda has not, generally, included disability. An idea common in India is that disability represents a personal flaw and from a moral perspective that disability arises as a consequence of karmic misdeeds. Impairments are deserved and intrinsically punitive. The women with disability deserves sympathy and is dependent on the assistance of others. From a biomedical or rehabilitative perspective, disability encompasses defects that require clinical intervention. The United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) recognizes that disability can be seen as a collection of hindrances to participation in society, a product of the interaction between people with impairments, attitudinal, and environmental barriers. If women with disability do not physically measure up to able-bodied standards, they are exploited and discriminated. They struggle against negative stereotyping in an attempt to develop a positive sense of self within bodily and societal limitations.

India has signed and ratified both CEDAW and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). As these two intersect and reinforce each other in the context of rights of women and girls with disabilities. Erasure as individuals and Invisibility as a group: that is the fate of women with

disabilities. Teased, taunted, looked down upon, and spoken about instead of spoken to, women with disabilities experience the combined disadvantages associated with gender and disability. They live an invisible existence on the fringes of society; exclusion, stigma and bias are a routine aspect of their lives. Autonomy, respect, dignity and equality of personhood are denied to them. Women with disabilities form a heterogeneous group, since disability and gender also intersect with other categories like type of disability, class, caste, ethnicity, and rural-urban residence. There is a lack of information and awareness about the rights of women with disabilities and therefore a lack of monitoring process. Women are more likely than men to become disabled during their lives, due in part to gender bias in the allocation of scarce resources and in access to services. When ill, girls and women are less likely to receive medical attention than boys and men, particularly in developing countries where medical care may be a considerable distance from home. They are also less likely to receive preventive care, such as immunizations. Due to social, cultural and religious factors, disabled women are less likely than men to make use of existing social services, including residential services. Disabled women and girls face the same spectrum of human rights abuses that non-disabled women face, but their social isolation and dependence magnifies these abuses and their consequences. Women and girls with disabilities fare less well on most indicators of educational, professional, financial, and social success than their non-disabled female. Even where the laws are not discriminatory, disabled women and girls face a host of abuses at the hands of their families, communities, and the state. Though definitive data is rare, but the fact is that disabled women and girls face higher rates of violence and discrimination than non-disabled women.

Definition

According to many definitions, a disability is an impairment that may be cognitive, developmental, intellectual, mental, physical, and sensory or some combination of these. Disability substantially affects a person's life activities and may be present from birth or occur during a person's lifetime. Disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Disability is thus not just a health problem. It is a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives.

Causes of Disability

Causes of disability from a medical or bio-centric standpoint tends to emphasise disease, hereditary and birth defects over systemic and environmental factors. Genetic factors and lack of access to basic services can also lead to a person becoming disabled, for example, Before birth poor nutrition, improper medication, taking drugs, smoking cigarettes, mother exposed to disease, mental or physical trauma. During birth (premature delivery, complicated delivery. After birth Malnutrition, Lack of vaccination, Infections like meningitis polio, accident, trauma, toxic substance can cause disabilities in women. There are other important factor which causes disabilities especially in women, these are:

Poverty and Disability -There is a high correlation between disability and poverty. People with disabilities are estimated to make up to 15 to 20% of the poor in developing countries Inequitable economic and social policies have contributed to large numbers of people living in extreme poverty. Poor families often do not have sufficient income to meet their basic needs. Inadequate shelter, unhygienic living conditions, lack of sanitation and clean drinking water combined with poor access to health facilities lead to disability. **Malnutrition and Disability**- Malnutrition in its various forms is a cause of disability as well as a contributory factor in other ailments that increase susceptibility to disabling conditions. Common micronutrient deficiencies that affect disability include: Vitamin A deficiency – blindness, Vitamin B complex deficiency – beri-beri, pellagra and anaemia, Vitamin D deficiency – rickets, Iodine deficiency –osteoporosis are few examples.

Occupational Hazards- Large number workforce in India is in the unorganised sector, which is characterised by low levels of technology, low standards of safety and hazardous working conditions. Occupation-related health problems of workers employed in stone quarrying, leather industry, glasswork, weaving, diamond cutting, hand embroidery, and children employed in carpet, cracker and match industry have been recognised but have not received appropriate and sustained attention by those responsible for regulating work standards. **Wars and Disability**- War has been the single largest factor responsible for causing permanent disablement not only to combatants in the battlefield but also to civilians who are forced to bear the hazards of lethal, chemical and nuclear weapons. A study suggest that women and children are largely victim of the war and armed conflicts

Crime and Disability – Domestic violence, violent crimes underline shortcomings in the social, political and economic arrangements of a society. Many children and women are abducted to be used in prostitution, slavery and beggary.

Road Accidents - Unplanned cities with narrow roads, rapid growth in number of vehicles and disregard of traffic regulations have been responsible for increasing the number of road accidents in India. If current trends continue, road accidents may become the leading cause of death and disability in the country. It is estimated that by 2020, road traffic accidents will be ranked as the third leading cause of disability in the Asian and Pacific region. Quadriplegia, paraplegia, brain damage and behavioural disorders are some common disabilities among survivors of traffic accidents.

Legal Framework for Protection of Disabled Women

Constitution: Article 15 of the Constitution of India prohibits the State from discriminating on the basis of sex. The Article contains a provision stating that nothing should prevent the State from making special provisions for women including those with disabilities. Article 16 states that the State shall not discriminate on the basis of sex with regard to equality of opportunity of employment. The Constitution under Directive Principles of State Policy also imposes a positive obligation on the State to endeavour to improve the status of women including women with disabilities by providing equal treatment of both men & women with disabilities. Article 17 of the Constitution says that no person including the disabled irrespective of his belonging can be treated as an untouchable. Every person including the disabled has his life and liberty guaranteed under Article 21 of the Constitution. There can be no traffic in human beings including the women with disabilities, and beggar and other forms of forced labour is prohibited and the same is made punishable in accordance with law Article 23. Article 24 prohibits employment of children including the disabled below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment. No disabled person can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious group. Every disabled person including women can move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by Article 32. No disabled person owning property (like the non-disabled) can be deprived of his property except by authority of law though right to property is not a fundamental right. Any unauthorized deprivation of property can be challenged by suit and for relief by way of damages.

The persons with disabilities Act, 1995: The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is a significant step which ensures equal opportunities for the people with disabilities and their full participation in the nation building. The Act provides for both the preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development, creation of barrier-free environment, rehabilitation of persons with disability, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability etc. The main provision of this act are: Prevention and Early Detection of Disabilities, Education, Employment, Non-Discrimination, Research and Manpower Development, Affirmative Action, Social Security & Grievance Redressal.

Rights of Persons with Disabilities Bill – 2016: This Bill replaces the existing the persons with disabilities Act, 1995. The salient features of the Bill are: it has clearly been defined disability based on an evolving and dynamic concept. The types of disabilities have been increased from existing 7 to 21 which includes, Blindness, Low-vision, Leprosy Cured persons, Hearing Impairment, Locomotor Disability, Dwarfism, Intellectual Disability, Mental Illness, Autism Spectrum Disorder, Cerebral Palsy, Muscular Dystrophy, Chronic Neurological conditions, Specific Learning Disabilities, Multiple Sclerosis, Speech and Language disability, Thalassemia, Hemophilia, Sickle Cell disease, Multiple Disabilities including deaf blindness, Acid Attack victim, Parkinson's disease. The Central Government will have the power to add more types of disabilities. Speech and Language Disability and Specific Learning Disability have been added for the first time. Acid Attack Victims have been included. Dwarfism, muscular dystrophy have has been indicated as separate class of specified disability. The New categories of disabilities also included three blood disorders, Thalassemia, Hemophilia and Sickle Cell disease. Responsibility has been cast upon the appropriate governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others. Additional benefits such as reservation in higher education, government jobs, reservation in allocation of land, poverty alleviation schemes etc. have been provided for persons with benchmark disabilities and those with high support needs. Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education. Government funded educational institutions as well as the government recognized institutions will have to provide inclusive education to the children with disabilities. For strengthening the Prime Minister's Accessible India Campaign, stress has been given to ensure accessibility in public buildings (both Government and private) in a prescribed time-frame. Reservation in vacancies in government establishments has been increased from 3% to 4% for certain persons or class of persons with benchmark disability. The Bill provides for penalties for offences committed against persons with disabilities and also violation of the provisions of the new law. Special Courts will be designated in each

district to handle cases concerning violation of rights of PwDs. The New Act will bring law in line with the United National Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory.

Education Law: The right to education is available to all citizens including the disabled women. Article 29(2) of the Constitution provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language. Article 45 of the Constitution directs the State to provide free and compulsory education for all children including the disabled women until they attain the age of 14 years. No child can be denied admission into any education institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language.

Obstacles

There are various obstacles accessing the benefits & services apart from that there are many problems faced by women with Disabilities to access the services easily, such as:

Discrimination: The experience of being disabled exposes women with disabilities to multiple discriminations in the domains of culture, society, politics and the economy, the specificity of the particular disability creates different needs, generates subtle differences which go unrecognized. The complex issues affecting women with disabilities must be understood in relation to the distinct difference within various disabilities, men with disabilities and persons without disabilities, placed in the matrix of the CEDAW and the CRPD. Ensuring accessibility to these women, through the removal of social and political barriers, including attitudinal and communication barriers should be the overarching goal of public policy. Under Art 4 of CEDAW temporary special measures such as quotas, support and reasonable accommodation are to be used in articles on political participation and public life (also employment and education) women with disabilities political there are no special measure in the 33% reservation for women in local governance. At the level of policy, women with disabilities continue to be neglected both in disability specific and gender specific programmes and policies. In the 3 per cent reservation for persons with disabilities in education and employment, there is no provision for women with disabilities. There is no segment of women with disabilities in the planning process. Even though strong stereotypes of asexuality and hyper sexuality configure the disabled identity, the complexity of disabled sexuality is lost in public policy because there is no component on WwDs for instance in the sexual and reproductive programmes. There are no specific regulations that would protect and empower women with disabilities.

Equality before Law: Women with disabilities continue to remain far from achieving equality and justices. The Persons with Disabilities Act, 1995, does not contain a single right on legal capacity. Despite the provision of legal capacity there is a failure to recognize it by the State. One of the most obvious barriers to equality before law is women's access to the justice system. If women cannot access the justice system they are excluded from rights. Their testimonies are not recorded or discounted or there is a tendency to 'infantilize' them, especially women with intellectual disabilities or not take it as credible if they have a psycho-social disability.

Education: Women and girls with disabilities fare less well in the Indian educational arena than either their male counter parts or other women without disabilities. There are several hurdles to girls with disabilities accessing and remaining in education. Firstly, it is within families that decisions may be taken whereby it is considered necessary to invest in the education for a disabled girl with the available resources being used for the education of other siblings. Secondly, accessible transport and safe commuting options may not be available to reach school. Factors within schools like absence of special teachers: and basic infrastructural facilities, such as accessible toilets, right gradient of the ramp, classrooms, library, canteen, toilets, water drinking area and study material are major barriers to education of disabled girls. Absence of other infrastructure such as residential facilities and specialized equipment designed to address the need of the women with disabilities act as an added deterrent to education. Girls with hearing impairments suffer due to non-provision of sign language interpreters in educational institutions, work places both government and private and public places especially when sexual abuse is to be reported; Instruction in alternative forms of communication is not adequately guaranteed.

Violence and Torture: Violence in all its facets remains a serious area of concern for women with different disabilities, both as an individual experience and a structural reality that systematically oppresses them in all areas of life. Adding to the greater vulnerability of becoming victims are a multiplicity of other factors, such as severity of the disability, dependence on the abuser, communication limitations for instance, women with speech and hearing disabilities, intellectual disabilities, psychosocial disabilities, easy access to inmates in institutional setups, low or non-credibility to complaints of harassment and abuse by women with

psychosocial and intellectual disabilities, myths around sexuality and the whole range socioeconomic and cultural factors that configure the lives of non-disabled women in patriarchal society. Once abuse has been experienced and acknowledged, there are many barriers to accessing justice, including complicated mechanisms for complaints and redressal, absence of accountability of both state and private actors and insensitivity of personnel in the police and judicial systems. CRPD recognises the issue of violence and provides for protection from torture, ill-treatment, exploitation, abuse and violence under Articles 15 and 16. These provision when read along-with the broad principles of equality and non-discrimination and the specific provisions of elimination of prejudice under Article 124. India's responsibility to ensure for the provision of a more responsive legal framework, a stricter mechanism of monitoring, accountability and punitive action.

Suggestions & Recommendations

Since India is contemplating to harmonize UNCRPD laws in its domestic law, it is important to highlight some of the broader legislative and policy measures that need to be given top priority. In this regard, some broader and important suggestions/recommendation are: There is an immediate need to bring legislation in compliance with its commitments to the international community under the UN Convention on Disability. There is a need to make constitutional amendments making explicit mention of the term 'disability' under Articles 15 and 16 of the Constitution as a prohibited ground of discrimination as well as for the realization of the equality in opportunities. There is a need to do away with all the different kinds of definitions of disability under different Acts. As far as possible, a uniform definition of disability shall be adopted based on the new Disability legislation to be adopted in compliance with the UNCRPD. Simply defining disability on the basis of certain medical criteria is not enough. The social barriers experienced by a women with disability person due to her impairment may also be recognized as criteria in defining disability. Education & employment of women with disability is very important for them to live a dignified living. Education enhances the employment and livelihood opportunities for them. Every effort should be made to ensure that no disabled women particularly disabled girl child is left out from the education system. The educational rights of disabled girl are different from such rights for other children. It requires reasonable accommodation, additional support and accessibility infrastructure, including special educators. There is also a need for recognizing educational rights and entitlements for the women with disabilities at the higher education level. Coming to employment, it is important that, along with public establishments, the private establishments employing people beyond certain numbers may also be forced through legislation to employ persons with disabilities especially disabled women. There is also a need to create employment and livelihood opportunities for women with disability in all the sector of the economy, including the informal sector. Poverty, malnutrition and inadequate healthcare are the major factors in causing disability in the long run. Adequate and long term policy needs to be adopted to deal with these problems. Old-age disability is increasingly becoming a major concern for all of us. There numbers are increasing day by day. There is a need to have adequate legal and policy measures including social security and welfare measures to deal with this growing and old-age disabled population. Woman and girl child with disability face double discrimination due to existing gender discrimination and social inequality. They are socially, culturally and economically more dis-advantaged people. Accordingly, whenever any law or policy is made for disabled persons, specific provisions should be made for this highly discriminated and dis-advantaged group of people. Monitoring and implementation of the existing laws and policies for the disabled women is very weak. They have not been able to draw the desired attention and public awareness about their role and functioning. There is a need for strengthening the implementation and monitoring mechanism for the laws and policies. Adequate funding and infrastructure should be provided for implementation and monitoring purpose.

Conclusion

To conclude, women with disabilities have enough potential to contribute to the society and its development provided they are allowed to fully participate through recognition of their rights and dignity. The legislations meant for safeguarding the persons with disabilities and the various policies / schemes / programmes must be able to address the issues of alarming rate of illiteracy, unemployment and poverty among the persons with disabilities. Public perception, attitude and awareness have significant role to play. There is a need for social change through public awareness. There should be endeavour 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. Women with disabilities faces pressure from their natal families to conform, and described experiences of having to prove themselves capable. Gender roles frame women's stay in their natal homes as a precursor to their being given away to marital homes. For

women in general, and particularly for women with disabilities from marginalized communities, sustained efforts to promote independent living would go a long way in resisting family violence. Campaigns around violence and laws protecting women from it, education and career guidance, sexuality education, and housing schemes all need to be geared toward equipping women to make life choices that protect them from violence, live without fear of exclusion and discrimination, and resist oppressive norms. In India, the numbers of women with disabilities are so large, their problems are complex, available resources also scarce, social stigma still attached and people attitudes so damaging. Attitudinal barriers engrained as part of India's historical response to disability must be changed through education programs for both teachers and the general populace. These programs require financial and collaborative commitment from key national and state education stakeholders, and partnership with universities to support research-based initiatives. It is only legislation which can eventually bring about a substantial change in a uniform manner. Although legislation cannot alone radically change the fabric of a society in a short span of time, it can nevertheless, increase accessibility of the disabled to education and employment, to public buildings and shopping centres, to means of transport and communication. For achieving this task it's necessary to change public attitudes, remove social stigma, provide barrier free environment, needs reformation in the area of policy and institutional level.

Reference

- Article 6 of CRPD recognizes the multiple discrimination WwD are subjected to and in this regard asks States to the full and equal rights of women.
- Section 16 subsection 1; Section 102 sub section 1 and Section 191 subsection 1 are the articles of exclusion. Other Acts which entrench the exclusion are the MHA 1987, RCI Act 1992 and National Trust Act 1999.
- Sarva Shiksha Abhiyan (SSA) programme is aimed at Universal Elementary Education. It was launched in January 2001 in order to provide useful and relevant education for all children in the age group of 6-14 years by 2010. It is an attempt to provide an opportunity for improving human capabilities to all children, with special focus on bridging social, regional and gender gaps, through the active participation of the community in the management of schools.
- Education for All, Ministry of Human Resource Development, Government of India
- Under the Sabla and Ladli scheme, the Delhi Government has declared Rs. 1 lakh incentive on the birth of a girl child
- Visit <http://www.censusindia.gov.in>
- Office of the Controller of Vagrancy. And Govt. of Andhra Pradesh. 2006 Disabled Welfare Visakhapatnam. Govt. of Orissa, Dept. of Women and Child. 2006 in a Multi State Socio Economic Study of WwDs in India (UNDP, Govt. of India and SMRC), 2007
- Ashok Agarwal Vs Govt. of Delhi, 2013
- Data from NSSO 2002. There is no disability after this report
- A RO is an involuntary admission made under the MHA, by bringing a person before a court for certifying as mentally ill and adjudicating right to liberty, to further admit that person in the asylum. A total of 20 Reception Orders were looked at of 2010, from the court of the Chief Magistrate, Pune district court.
- This was a major point of discussion at the Regional Meeting of the WwD India Network organized in Hyderabad on 23-24th February 2013
- WwD India network meeting in Bangalore on 4th February 2012. Information by local NGO using the methods.
- In a strongly fought case with Supreme Court intervention, a High Court ruling of forceful termination of pregnancy of a girl with intellectual disability who had been raped in a State run Shelter was overturned and the girl allowed to have the baby. Suchita Srivastava v. Chandigarh Administration (2009) 14 SCR 989
- The chart has been prepared by Anjali Organisation in Kolkata on the basis of information gathered by them.
- In VRC for Handicapped on 8th August 2013 a woman trainee was raped by an instructor
- WwD India Network meetings in Imphal (Manipur), Srinagar and Anantnag (Jammu and Kashmir)
- Shivani Gupta's initial report started a process of protests <http://accessabilityindia.blogspot.in/2010/10/50k-incentive-by-state-to-marry.html>
- This was raised as a serious area of concern by WwDs at the consultations held on the issues of WwDs by the WwDs India Network in October 2012 and June 2013.
- High Court of Orissa W.P (Cri) No 1127 of 2013 filed against State of Orissa by Sashiprava Bindani on behalf of SMRC.