

WOMEN WITH DISABILITIES IN INDIA: A PATH FORWARD TO EXPLORING THEIR RIGHTS AND OVERCOMING THEIR CHALLENGES

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ABSTRACT

Disable issues are a growing global problem and a complicated social issue. Disabled persons are increasing in number worldwide for many different reasons. As one of the greatest minorities in the world, people with disabilities make up a sizable fraction of the population in many nations. In this paper, we explore the unique challenges faced by disabled women, as well as the current legal frameworks in place to safeguard the rights of those with disabilities, and the complications these frameworks inevitably raise.

The numerous protections afforded to women who experience disabilities will also be discussed by the researcher. The purpose of this research is to perform a thorough examination of the legal provisions and laws that are currently in place in India with the aim of determining how they have benefited to the advancement of the protected framework of disabled individuals in the country and what problems they have caused.

Regardless of how society currently views women with disabilities, we all must come to terms with the fact that individuals with disabilities are essential members of our community. The time has come to remove discriminatory elements still present in some statutes and to replace them with more inclusive ones that include requirements about accessibility, as well as to implement these laws. But rules and regulations might not be enough. There is a major impact on public opinion, perspective, and consciousness.

Keywords: Women, Disability, Fundamental Rights, Human Rights, Fundamental freedom

INTRODUCTION

In India, the rights of women with disability are often disregarded. Because of the way society now views women with disabilities, they are often denied basic civil liberties. The daily suffering of a million people owing to inadequate care and treatment for a wide range of disabilities is a tragedy. Women with disabilities are overrepresented among India's impaired population, and they face significant barriers to participation in the labour force and higher education. Several studies have found that girls and women with disabilities are more likely to be victims of physical and sexual assault.

Furthermore, women who are physically disabled may have a more difficult time escaping abusive relationships. Deaf people may have trouble reaching out for aid or explaining when they've been mistreated. Sexual behaviors without appropriate consent are criminal in nature that should be registered; however, women with cognitive or psychosocial problems might not be aware of this fact. Furthermore, these difficulties are amplified by the stigma associated with sexuality and disability. Disabilities can be both a cause and an effect of gender-based violence and discrimination.

Women face multiple layers of discrimination due to their gender, age, and/or ethnicity. Disabling mental, physical, and social impairments result from the many forms of gender-based violence. Rape and sexual harassment are perhaps very general types of offences. Furthermore, domestic violence and intimate partner abuse are frequently not seen as crimes but as normal occurrences.

PLIGHTS OF WOMEN WITH DISABILITY

Women and girls with disabilities who experience abuse are further marginalized due to their experiences being less well documented and possibly not being explicit within legal definitions of abuse,

as well as due to their economic and physical dependence on their abuser, which makes it difficult to escape, especially in institutional settings.

Barriers to employment

Women with impairments account for 4% of the population but only 1.5% of the labour force. Disabled women encounter biases towards both women and people with impairments. Discrimination in the workplace and career progression is not unique to those with disabilities or women. While government policy guarantees that disabled employees will not be held back from advancing in their careers, there are some exceptions.

In addition to negative views and assumptions, people with disabilities face numerous other obstacles, such as inaccessible facilities and counterproductive laws. Women with disabilities remain economically vulnerable because they have limited access to the labour market due to a lack of accessible workplaces.¹

Lack of reliable and efficient transportation

Disabled people often face obstacles while trying to secure accessible public transportation. Communities may have specialized modes of transportation, but accessing them typically requires considerable preparation. The inability to go to and from work, doctor's appointments, and other self-care activities because of a lack of transportation is a serious problem. Women with disabilities already face additional challenges when travelling due to the prevalence of sexual assaults at the hands of transportation workers. All of these factors can contribute to deeper poverty for disabled women. Disabled people have an even harder time getting around since the equipment they need to go around is so costly, and this is especially true in more remote regions.

Greater medical expenses

Disabled people typically incur greater medical costs than the general population. Due to expensive medical care, women who are disabled often find it difficult to rise beyond the poverty line. They count on family and friends to help foot the bill, yet those closest to them are often the ones who abuse and discriminate against them. The cost of healthcare and diagnostic testing can add up quickly. There is a widespread lack of accessible educational opportunities for people with disabilities. The opinions of others, rather than their actual ability, often determine the educational opportunities available to them. People with intellectual limitations are especially vulnerable to this. Girls with disabilities have a harder time breaking out of poverty because of a lack of employment opportunities because they are not as well prepared for the workforce as their non-disabled peers.

Distressingly high rates of poverty among women with disabilities demand targeted efforts to address this issue, rather than broader efforts to reduce poverty among people with disabilities or women. Disabled women have certain concerns that need to be addressed. If overall economic growth and poverty rates fell for women but stayed the same for women with disabilities, we have a long way to go before we meet their unique requirements. Abuse is a widespread problem, but it is especially dangerous for women and girls who have impairments.²

Physical Barriers

Disabled women and girls face significant barriers to participating in global development projects and gaining access to basic services. Physical access to the facility and disability-aware policies and procedures are extremely limited for women with impairments. Personal care assistants, interpreters, service animals, and independent living assistance are only some of the examples of situations where the policy might be interpreted and interpreted differently for those who need it. Support services and specialized information are provided by surveying women who have experienced the condition to find out what kind of help they need, where they would like to get it, and in what format.³

¹ https://journals.sagepub.com/doi/pdf/10.4103/IJPSYM.IJPSYM_364_18

² https://journals.sagepub.com/doi/pdf/10.4103/IJPSYM.IJPSYM_364_18

³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5419007/>

Workers in the field of disability services should get training on gender-based violence to better address concerns, identify dangers, and assist victims. This may involve more than just making caregivers aware of the problem; it may also involve helping them acquire specialized skills, such the ability to recognize the signs of trauma or the body's response to stress. Promote the availability of specialized legal protection against abuse, such as in the case of reliance on home cares or institutional care. Financial and economic interventions, such as loan programs, entrepreneurship education, and consulting services for women to develop niche markets, should be considered where possible in order to increase women's autonomy and confidence.

Parental Rights Suspension

Oftentimes, social service organizations and divorce, visitation, and custody proceedings result in the termination of parental rights for women with psychological, intellectual, or physical problems because of preconceived notions about "unfit" mothers. When one parent does not have a disability, this becomes even more significant. Societies still fear having disabled women as parents, despite data showing that they are no more likely to maltreat children or raise so-called "defective" children than non-disabled parents.

Laws of many countries relating to divorce, child custody, and the termination of parental rights explicitly or implicitly equate parental disability with parental unfitness by providing for the termination of parental rights or the loss of custody based on the parent's disability status rather than on the parent's actual parenting skill or behaviour. Social care agencies may scrutinize moms with disabilities more closely than non-disabled mothers due to legal definitions and societal prejudices.

LEGAL FRAMEWORK

Constitutional Provisions

The commitment of the state to its people is demonstrated by the Preamble, the Directive Principles of State Policy, and the Fundamental Rights that are established in the Constitution of India. Not just this but Entry 9 in List II of Schedule 7 of the Constitution also talks about the "*Relief to the disabled and unemployable*" which is the responsibility of the State Governments. This is because the Central Government is responsible for ensuring that the State Governments comply with the provisions of the Constitution. Despite the fact these are safeguarded, the Constitution does not specifically name disability as one of the protected classes against unfair treatment.⁴

According to the Article 14 and Article 15, the State shall not engage in any form of discrimination based on a person's gender. However, there is a proviso in the article that states that the state shall not be prevented from creating specific provisions for women buy anything that is stated in this article. According to the Article 16, the State is prohibited from engaging in any form of discrimination based on sex about equality of opportunity in public employments. Even if the essential rights that have been described above do not specifically name those who are disabled in any form, they nonetheless apply to the group of people who are socially, economically, and educationally disadvantaged.

Protecting persons who are ill or disabled is mentioned briefly in the Constitution's Directive Principles of State Policy section of Chapter IV. Article 39A mandates that the state promote justice based on equal chances and offer free legal aid by appropriate law or scheme or any other means to ensure that no citizen is denied access to justice on the basis of economic or other impairments. Equal treatment of women and men in state policies is a positive requirement placed on the state by Article 39.⁵

These clauses foresee a very constructive function for the State in assisting in the improvement of underprivileged people's lot in life. It bears repeating that the Fundamental Rights guaranteed by Part III of the Indian Constitution are intended for Indian people and are enforceable in Indian courts. If a

⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5419007/>

⁵ https://journals.sagepub.com/doi/pdf/10.4103/IJPSYM.IJPSYM_364_18

person's fundamental rights are violated, he or she may seek redress in a court of law. Directive Principles of State Policy in Chapter-IV of the Constitution, on the other hand, are not enforceable and must be implemented by the state in its governance and lawmaking.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

The Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act of 1995 herein referred to as (PWD Act) is the primary and comprehensive law protecting the “*rights of people with disabilities*”. There are fourteen different topics covered. To qualify as a “*person with a disability*” under the PWD Act, an individual must have at least 40% disability, as determined by a qualified medical professional. The act also defines “*disability*” to include conditions such as blindness, low vision, leprosy recovery, hearing loss, mobility issues, cognitive impairment, and mental illness.⁶ Provisions for the early identification of disabilities⁷, rehabilitation⁸, and social security for people with disabilities⁹ are all included in this Act. It specifies the government agency responsible for supplying disabled people with necessary aids and appliances. Educational provisions can be found in chapter V.¹⁰ The act also details the precise accommodations that must be provided for people with disabilities, such as the elimination of physical barriers in educational settings and the modification of curricula to accommodate students with special needs.¹¹

As per Chapter VI of the Act, the employers were required to keep records and the vacancies which were not filled up to be carried forward, and the Government was obligated to identify and reserve the job for persons with disabilities and establish a special employment exchange. Furthermore, it gives “*Persons with Disabilities*” special and preferential rights in government employment and, among other things, sets aside 3% of vacancies for people with disabilities, of which 1% each is to be set aside for people with (1) blindness or low vision, (2) hearing impairment, and (3) loco motor disability or cerebral palsy.¹² The law also eliminates the mandatory retirement age for government workers.¹³

This Act also encourages taking steps to ensure that people with disabilities have equal access to the same opportunities for growth as everyone else. For the first time, a law in India specifically addresses the social and economic rights of the disabled. However, it does not go far enough in protecting the rights of disabled people, especially disabled women against assault and exploitation.

The Rehabilitation Council of India Act 1992

The government agency responsible for overseeing educational initiatives for people with disabilities, the economically poor, and those with special education needs is the Rehabilitation Council of India (RCI). Only this statutory body in India is responsible for keeping the Central Rehabilitation Register, which contains information on all certified individuals who run and offer educational and training programs to the designated populations. The government of India passed the Amendment Act in the year 2000. As a result of this change, the definitions are now included in the PWD Act, of 1995.

The Mental Health Act, 1987

The Mental Health Act was passed well before the 1990s human rights movement. It is a civil rights bill because it seeks to establish minimum requirements for care in mental health facilities and to address

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5419007/>

⁷ Sec. 25 of the PWD Act 1995

⁸ Sec. 56 of the PWD Act 1995

⁹ Sec. 66 of the PWD Act 1995

¹⁰ Sec. 42 of the PWD Act 1995

¹¹ Sec. 30 of the PWD Act 1995

¹² Sec. 33 of the PWD Act 1995

¹³ Sec. 38 (B) of the PWD Act 1995

issues relating to the ownership and management of their assets. This is to ensure that people with mental illness are not subjected to any form of mental or physical cruelty during their care, which is a basic human right.

The Rights of Persons with Disabilities Act, 2016

The number of qualifying circumstances has increased from 7 to 21 under the RPWD Act of 2016. For people with disabilities, *"the appropriate Government shall ensure that the PWD has the right to equality, life with dignity, and respect for his or her integrity equally with others,"* as stated in the RPWD Act, 2016.¹⁴ The government must take action to maximize the potential of people with disabilities by creating a welcoming and accessible setting for them to work in. As per this act *"No one will be subjected to discrimination based on disability, nor shall any individual's liberty be restricted solely based on disability, unless it is proven that the challenged act or omission was a proportional way of attaining a legitimate objective"*.¹⁵

Not just this but the following accommodations were made under the Criminal Law (Amendment) Act, 2013, to support women with disabilities: The right to record their statement with police in the privacy of their home or another location of their choosing; the right to have their statements to police and examinations videotaped; the right to assistance from a special educator or interpreter when the complaint is being recorded; and the exemption from the requirement that the statement is repeated during cross-examination by the defense counsel.¹⁶

State governments in India are required by law and policy to facilitate reparation, even when the offender cannot be located or recognized. Women and girls with disabilities have problems obtaining compensation, even in circumstances of the acute assault, trauma, and economic hardships like childbirth after rape. This is especially important for vulnerable people and those who live in remote areas.¹⁷

The government needs to take immediate action to ensure accommodations and other measures are put in place so that girls and women with disabilities are no longer on the margins of justice. Discrimination and accessibility issues for women and girls with disabilities are caused by both their gender and their condition. Women with impairments are not able to access many initiatives that are aimed at assisting women. Programs designed to help those with impairments might not be adequate for the needs of women or girls with disabilities. Using both the human rights of women and the human rights of people with disabilities in conjunction with one another may be necessary to protect the human rights of women and girls with disabilities.

RIGHTS OF WOMEN WITH DISABILITY

Some of the fundamental rights for women with disabilities that have been acknowledged by international and national legal frameworks are as follows:

(i) Right to Education

The right to education has been regarded as one of the most important rights in the twenty-first century. The best method for promoting social and economic empowerment is education. But because of inaccessible schools, poorly prepared teachers, or a lack of awareness among parents and school employees, millions of disabled children worldwide are denied the opportunity to go to school. Furthermore, disabled women and girls perform worse in the educational sphere than their impaired male or non-disabled female peers.¹⁸

¹⁴ <https://thehansfoundation.org/wp-content/uploads/2019/07/FINAL-Handbook-on-the-RPWD-Act-2016-ENGLISH.pdf>

¹⁵ Sec. 3 of the RPWD Act 2016

¹⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5419007/>

¹⁷ <https://thehansfoundation.org/wp-content/uploads/2019/07/FINAL-Handbook-on-the-RPWD-Act-2016-ENGLISH.pdf>

¹⁸ <https://blog.ipleaders.in/rights-of-persons-with-disabilities-act-2016/>

The Indian Constitution's Article 21A declares the right to an education to be a basic one. The PWD Act also recognizes the right to education for people with disabilities. Authorities are required to provide a suitable environment until the child reaches the age of 18 under Section 26 of this PWD Act. The PWD Act also places a strong obligation on the relevant governments to support inclusive education and special schools for kids with disabilities.¹⁹

(ii) Right to Employment

Although employment is a crucial component of independent living, it is a big worry for individuals with disabilities because the majorities of them are either unemployed or have low-wage jobs. Even though people with disabilities generally have trouble finding employment, men with disabilities are nearly twice as likely to hold down a job as women with disabilities. Women with impairments who sought employment experienced both gender and disability prejudice. Employers view disabled women as unproductive employees who can't adapt to the job.²⁰

Article 16 of the Constitution of India guarantees people with disabilities the same rights as everyone else when it comes to employment and recognizes the value of work. The Indian government is required by law to ensure that men and women both have access to "*sufficient means of livelihood*," defined as "*equal pay for equal work*," as outlined in Article 39 of the country's constitution. To add on, Section 33 of the PWD Act gives "*Persons with Disabilities*" exceptional and preferential rights in government employment, including a 3% quota of reserved openings.

(iii) Right to Barrier-Free Environment

Accessibility is viewed as a broad notion that covers the avoidance and removal of barriers that make it difficult for people with disabilities to use infrastructure, services, and goods. People with disabilities can move about freely and safely in a barrier-free environment and enjoy the amenities in the built environment. The States are required to take the necessary steps to ensure that people with disabilities have equal access to the built environment, public transportation, information and communications, including the internet and other facilities and services, both in urban and rural areas.

The right to accessibility is not expressly protected by the Constitution. Since the many rights granted by the constitution have little significance for people with disabilities without accessibility, it can be inferred that accessibility is necessary from the constitutional promise of equality of status and opportunity to everyone.²¹

(iv) Right to be Protected against Violence

For people with disabilities, violence and abuse are important issues, especially for women with disabilities who are more vulnerable than non-disabled people. Women with disabilities are more likely to experience various forms of exploitation, such as sexual harassment, domestic abuse, and workplace exploitation. Especially if they are intellectually challenged, they can frequently make for relatively simple sexual targets. Because of their relative anonymity and seclusion, women with disabilities are easy victims of exploitation inside the family. As a result, there is a high risk of physical and psychological abuse.

In addition, disabled women are probably less likely to have access to services due to their seclusion. The Protection of Women from Domestic Violence Act, 2005 is already in place in India to protect women who experience domestic violence, but further gender-specific protections are required to ensure that women with disabilities are protected from abuse, violence, and exploitation. The Domestic Violence Act, of 2005 may also be amended to make sure that women with disabilities can receive the protection it offers.²²

(v) Right to Integrity and Legal Capacity

¹⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5419007/>

²⁰ <https://www.ijpn.in/article.asp?issn=2231-1505;year=2018;volume=15;issue=2;spage=61;epage=65;aulast=Gupta>

²¹ *Ibid*

²² <https://blog.ipleaders.in/rights-of-persons-with-disabilities-act-2016/>

The right to integrity essentially refers to the obligation to respect each person as a unique individual and to permit them to freely exercise their fundamental human rights. For women with disabilities, self-determination is a key problem. This right is related to several other issues that affect women with disabilities. For instance, it is significant in the context of the right to choose, respect for consent, autonomy, etc. regarding health. Regarding abuse prevention, this right is also important.

Therefore, to ensure the protection of these other rights and entitlements, it is vital to recognize the right to integrity, specifically for women with disabilities. Their vulnerability is increased when their autonomy and legal capabilities are not acknowledged. For instance, in the event of forced sterilizations, the permission and choice of disabled women won't be honored in the lack of legal ability recognition. There is no explicit law in Indian that guarantees the integrity or legal competence of people with disabilities. However, it might be protected under Article 21 which guarantees the right to life under the Indian Constitution.

(vi) Right to Privacy

Personal, health, and rehabilitation information, as well as matters about one's family, home life, communication, dignity, and public image, are all safeguarded. Women who experience impairments face unique challenges when it comes to issues of bodily and sexual privacy, making it imperative that all these aspects of the right to privacy be respected. Article 21 of the Indian Constitution protects an individual's right to privacy even though it is not explicitly guaranteed.²³

(vii) Right to home and family

Women with impairments are devalued by society because they are seen as incapable of sexuality, unfit for marriage, and unable to bear children. These false beliefs make them less likely to settle down with a partner. When they do tie the knot, it is usually under less-than-ideal conditions. Torture, as well as other forms of cruel, inhuman, and degrading treatment, is an apt description of the systematic discrimination against and violations of the human rights of women and girls who experience impairments. They may feel significant social isolation and permanent grief as a result of the widespread denial of their right to enjoy their sexuality, have sexual relationships, and to established and maintain families. Article 21 of the Indian Constitution protects the right to marriage, family, and residence.²⁴

(viii) Right to Health

Women of all ages who are disabled often have trouble getting to medical facilities. In the Indian Constitution, this provision for the right to health is found in Article 21.

CONCLUSION AND SUGGESTIONS

It is a terrible thing that women are still discriminated against because of their disabilities. Disability-related pain and suffering pose a demoralizing existential risk. It's impossible to fathom the depths of trauma and agony these women have endured. They are unable to express the depth of their anguish and pain. They feel abandoned and cheated out of the rights guaranteed to them by the Constitution of India. Just writing and forming words won't take away their pain. Laws and policies that are implemented at every level of our society will only make a marginal change.

A distinct and efficient organization must be formed to deal with issues about people with disabilities. Persons with disabilities should have access to a single, specialized support line that assists in a format that takes into account their unique communication needs. Women with disabilities face obstacles to their economic and social advancement due to a lack of knowledge about their rights, government programs, subsidies, compensations, job reservations, and prospects for self-employment. These people should be brought into the public front to remind people that they are human beings with the same rights

²³ <https://www.ijpn.in/article.asp?issn=2231-1505;year=2018;volume=15;issue=2;spage=61;epage=65;aualast=Gupta>

²⁴ <https://blog.ipleaders.in/rights-of-persons-with-disabilities-act-2016/>

as everyone else. Even though we now live in a fully digitalized virtual world, these people are still severely behind the times. It will be beneficial to link them using this advanced technology.

Forced or nonconsensual sterilizations are an example of social injustice that should be made illegal. Human rights are being violated when invasive operations are performed on healthy people. To better accommodate parents, who are caring for disabled children or other family members, labour regulations should be changed to allow for more flexible working hours and leave. Hospitals, daycares, public or private schools, and other institutions that perform sterilizations on disabled people without their informed consent should be held legally responsible.

It is also crucial to keep a close eye on the facilities that the government operates to house people with disabilities, to make sure that their human rights are being respected. The authority should include doctors, human rights advocates, attorneys, psychologists, and special education instructors with appropriate experience working with people with mental disabilities.