

An Analytical Study of Sexual Violence against Women with Disability

Abstract

Violence against women and girls with disabilities is a significant issue that is related to both gender and disability-based discrimination and exclusion. Both, these two factors result in an extremely high risk of violence against girls and women with disabilities. The paper analyses the social and economic conditions of women with disability as well as critically analyze the different statutory and constitutional provisions and how far they have been able to improve the situation of disable women in the society.

Keywords: Disability, World Health Organization, Discrimination, Violence, Report, Gender, Deprivation.

Introduction

Violence against women and girls with disabilities is a significant issue that is related to both gender and disability-based discrimination and exclusion. Both, these two factors result in an extremely high risk of violence against girls and women with disabilities.¹ World Health Organization in its World Report on Violence and Health 2002, defines sexual violence as-

“any sexual act, attempt to obtain a sexual act, unwanted sexual comments, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work”²

Violence against women has been defined in Article 1 of the UN Declaration on the Elimination of Violence against Women, 1993 to mean-

“Any act of gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”³

Discrimination towards people with disabilities, coupled with attitudes towards women in patriarchal societies, put women and girls with disabilities at the increased risk for violence. Although women and girls with disabilities experience many of the same forms of violence that all women experience, when gender and disability intersect, violence has unique forms and causes, and results in unique consequences⁴. Women and girls with disabilities are particularly targeted by perpetrators of violence because of social exclusion, limited mobility, a lack of support structures, communication barriers, and negative social perceptions. The range of violence experienced by women and girls with disabilities can include physical and sexual violence, as well as emotional and verbal abuse.⁵

1. Available data shows that there is a higher rate of violence against women with disabilities than against men with disabilities.⁶
2. Research demonstrates that the incidence of maltreatment and abuse of women with disabilities far exceeds that of women without disabilities.⁷
3. Children with disabilities have a substantially greater risk of being victims of violence than their peers without disabilities.⁸
4. In many cases, perpetrators of violence are caregivers, either at home or in institutional settings, and females with disabilities often find themselves trapped by violent partners or family members because they are financially and socially dependent on them for survival.⁹
5. Studies indicate that women with disabilities are sexually assaulted at a rate at least twice that of the general population of women.¹⁰
6. In the case of women with a cognitive or communication disability, their lack of understanding of the situation during a sexual assault and/or their inability to say no can be wrongly perceived as their consent.¹¹



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7. Girls with disabilities experience discrimination and heightened vulnerability on account of their gender, age, and disability, and girls with intellectual disabilities are particularly vulnerable. It is estimated that between 40 to 70 per cent will be sexually abused before they reach 18 years of age.¹²

Disabled women have in general been silenced within society, denied their rights and equal economic and social opportunities due to prejudice, stigma and poverty. They are commonly perceived as asexual, which means that they are denied the possibility of close relationships or marriage. It is assumed that they are incapable of handling the maternal role, hence, too often forced undergo sterilization.¹³ Sexual Violence is serious problems for persons with disabilities, especially for women with disabilities.¹⁴ Most of the cases of sexual violence and abuse go unreported and therefore remain unaddressed.

Sexual Violence, exploitation, and abuse have long-lasting harmful effects on persons with disabilities, and when such abuses occur in isolated settings, the chances of accessing the assistance needed for recovery is very low. Moreover, such traumatic experiences may increase disability-related functional limitations or create secondary disabilities.

Programmes and services that address sexual violence and abuse in the community, particularly those targeting women and girls, very often do not reach out to persons with disabilities. Disability advocates are working to address these gaps and to ensure that programmes and services are inclusive and accommodating to all.

Barriers in Accessing Treatment and Justice

For women and girls with disabilities, the process for reporting violence is often inaccessible because of inadequate policies and standards, negative attitudes, physical access, information availability, communication, lack of service provision, inadequate funding, and lack of involving women with disabilities in decisions that directly affect their lives.¹⁵

1. Many women and girls with disabilities have limited or no access to education and do not know formal sign language, and so communicate only through signs that mainly their close family members understand.
2. Because of the stigma associated with reporting sexual and gender-based violence and the fact that the perpetrators are sometimes members of the family, the presence of an accompanying family member may discourage women from coming forward.
3. Further, police often perceive a woman with an intellectual disability as not being a credible witness, and in such instances, they may not proceed with an investigation of the crime.¹⁵

The social context of disability, including factors such as inaccessibility, reliance on 'support services, poverty and isolation has a powerful impact on individuals' and increases the risk of violence. As per Census report 2011, women constitute 42.457% of the total population of persons with disabilities in

India. "With the increasing number of sexual assault cases, this is the high time to have a gender-sensitive disability law in India along with this need to bring some essential amendments in the existing criminal laws. In the present paper the main aim is to focus on sexual violence, abuse and exploitation against the physically and mentally disabled women and related legal issues and the remedies / measures in this regard.

The Critical Areas Of Concern

Women with disabilities are two to three times more likely to experience violence and abuse in various spheres than women without disabilities, although no overall global data exists and studies s based on data drawn from different sources.¹⁶

Violence within Home

Women with disabilities experience violence in the home from partners or other family members, caregivers, or intruders. When they seek assistance from police or other members of the community, their complaints are often not taken seriously or disbelieved entirely due to stigma and orthodox stereotyping approach. Moreover, barriers to accessing justice for women with disabilities further complicate their ability to seek redressal and protection.¹⁷

Domestic Violence

In domestic violence situations, women with disabilities often don't complain against an abuser because of emotional, financial or physical dependence. Although the Domestic Violence Act, 2005 is being implemented to address issues of violence and abuse in the domestic setting for all women, women with disabilities continue to face serious abuses at the hands of relatives. These include the deliberate acts of seclusion, denial of basic amenities, chaining, mental abuse, emotional deprivation and abandonment. For women with disabilities abandonment happens at two levels, one due to their disability and the other when they are discovered to have been victims of sexual violence, especially in instances where they have conceived as a result of the abuse. In both cases, their vulnerability increases to more sexual abuse in the society by their unprotected and homeless state of being.¹⁸

Violence within Community

Sexual Violence Women and girls with disabilities are subjected to violence in the community and broader society. Many experience rape and sexual abuse at home, at work, at school, or on the street. Others experience rape and sexual abuse within institutions.¹⁹

Violence within Institutions

Institutions in relation to women and girls with disabilities includes mental health facilities, care-homes, residential hostels, halfway homes, homes for the destitute, juvenile homes for children with special needs and religious places. Within these places, violence can range from chaining, filthy living conditions, common bathing, non-provision of clothes especially during menstruation, physical abuse and sexual violence often repetitive in nature. However, there is no response to the problem of systemic violence of this sort. Additionally, provisions for

monitoring remain almost unimplemented. For example, as per the Mental Health Act of 1987, the only penalty for privately run institutions is revocation of license, which can be renewed after payment of fine and improvements suggested by the authority. Thus, state responsibility and accountability of personnel becomes even less in institutions ran by private entities and non-existent in case of religious places, where it is very common to take women with psychosocial disabilities for treatment through prayer and black magic. Sexual violence within mental hospitals still is a largely unaddressed area apart from the other forms of mental and physical violence that is experienced by the women housed therein. Moreover, the insensitivity of officials, staff of institutions and caretakers towards issues of abuse only compounds the problem.²⁰

Legal Framework

The Constitution of India

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution of India not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. The Constitution, while protecting equality under Articles 14, 15 and 16, does not include disability as one of the categories of non-discrimination. The only mention of protection of persons facing disability and sickness is made in the Directive Principles of State Policy in Chapter-IV of the Constitution. Article 39A enjoins the State to promote justice, on the basis of equal opportunities and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and under Article 41 the State shall endeavor to provide the right to work, education and to public assistance in case of unemployment, old age, sickness and disablement, within the limits of economic capacity.

Hence, there is no guarantee from the State to prevent discrimination due to disability. In this context enactment of PWD Act is remarkable because for the first time in India the social and economic rights of disabled have been addressed by a statute.²¹

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

The PWD Act covers all the issues of disability but remains silent on the discrimination and violence faced by women with disabilities that differentiate their situation from men with disabilities.

Convention on the Rights of Persons with Disabilities

Article 3(g) - Principle of equality between men and women.

Article 6

Responsibility of the State Party to recognize the multiple discrimination faced by girls and women with disabilities and undertaken measures to "ensure the full and equal enjoyment by

them of all human rights and fundamental freedoms" and to enable full development, advancement and empowerment of women"

Article 15- Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruelty, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16 - Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-gender- and disability-sensitive.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Convention on the Elimination of All Forms of Discrimination against Women, 1979

The Convention defines discrimination against women and does not directly refer to violence, the Committee on the Elimination of Discrimination Against Women in *General*

Recommendation No 19 explains that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within Article 1, CEDAW.

Justice Verma Committee Report & Criminal Law (Amendment) Act, 2013

Issues relating to disabled women were discussed as a core agenda for the first time in the history of Sexual violence law reform in India by the Justice Verma Committee. The Committee was constituted by the central government after the 16th December 2013 Delhi gang rape and murder case, famously known as Nirbhaya Gang Rape, to look into the reform of sexual assault law in India. It responded positively and made a large number of recommendations to redress obstacles faced by disabled women firstly, in accessing the legal system and subsequently, navigating the tiresome trial process. The Cabinet approved the recommendations suggested by the Committee on 1st February 2013 and subsequently passed by the Indian Parliament as Criminal Law (Amendment) Act 2013, on 19th March 2013. The following are the major amendments brought about based on the recommendations of the Justice Verma Committee Report:

Section 166-A (Cr.P.C, 1973)

This section has been inserted which deals with a Public Servant who disobeys the direction under law or fails to record any information given to him under subsection (1) of section 154 of the Code of Criminal Procedure, 1973 and it provides rigorous imprisonment for minimum six months which may extend to two years and fine.

Section 166-B

Section 166-B has been inserted which prescribes imprisonment for one year or fine or both for a person in charge of a hospital public or private, for non-treatment of victim.

Section 228A (IPC, 1860)

Section 228A (IPC, 1860) provides conditions for disclosure of identity of the victim of certain offences etc. Section 228A (2) (c) provides that where the victim is dead or minor or of unsound mind, by, or with the authorization in writing of, the next of kin of the victim the identity of the victim cannot be disclosed. Provided that no such authorization shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any central or State government recognized welfare institution or organization. Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in subsection (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Section 375 (IPC, 1860)

Sections 375, 376, 376A, 376B, 376C and 376D which deals with sexual offences have been substituted with new Sections 375, 376, 376A, 376B, 376C, 376D redefining the offences with substantial

changes and also inserted a new Section 376E. Section 375 redefines the offence of rape and Section 376 prescribes punishment for rape.

Section 375 (Fifthly) & (Seventhly)

Section 375 (Fifthly) & (Seventhly) provides that the consent of the prosecutrix is vitiated if at the time of giving consent, by reason of unsoundness of mind is unable to understand the nature and consequences of that to which she gives consent or when she is unable to communicate consent.

Explanation 2 of Section 375 provides that 'consent' means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act; provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

As per Sub Section (1) of Section 376. person commits rape except in cases provided for in Sub Section (2) shall be punished with rigorous imprisonment of not less than seven years, but which may extend to imprisonment for life, and with fine.

Sub Section (2) of Section 376 prescribes the punishment for rape by a Police Officer or a Public Servant or Member of Armed Forces or a person being on the Management or on the Staff of a Jail, remand home or other place of custody or women's or children's institutions or by a person on the Management or on the Staff of a Hospital, and rape committed by a person in a position of trust or authority towards the person raped or by a near relative of the person raped or commits rape, on a woman incapable of giving consent (j); or commits rape on a woman suffering from mental or physical disability (1) shall be punished with rigorous imprisonment of not less than ten years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, and with fine.

Section 376A

Section 376A deals with a person committing an offence of rape and inflicting injury which causes death or causes the woman to be in a persistent vegetative state and the punishment is rigorous imprisonment of not less than twenty years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.

Section 376B

Section 376B deals with sexual intercourse by husband upon his wife during separation and prescribes punishment with imprisonment for not less than two years but which may extend to seven years with fine.

Section 376C

Section 376C deals with sexual intercourse by a person in authority and prescribes punishment with rigorous imprisonment for not less than five years but which may extend to ten years and with fine.

Section 376D

Section 376D deals with gang rape and prescribes punishment with rigorous imprisonment for

not less than twenty years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine to be paid to the victim.

Section 376E

Section 376E deals with punishment for repeat offenders and prescribes punishment with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.

Section 54A (Cr.P.C, 1973)

Under this section provisos have been inserted, that if the person identifying the person arrested is mentally or physically disabled, the process of identification shall take place under the supervision of a Judicial Magistrate and such identification process shall be video graphed.

Section 154 (Cr.P.C, 1973)

It is also provided that in Section 154 provisos have been inserted stipulating that if the information is given by the woman against whom an offence under Sections 326A, 326B, 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E, or 509 of IPC is alleged to have been committed or attempted, such information shall be recorded by a woman police officer or any woman officer. In the event that the person against whom an offence under the above mentioned under Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator and the recording of such information shall be videographed. The police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of Sub Section (5 A) of Section 164 as soon as possible.

Section 160 (Cr.P.C,1973)

Section 160 has been amended that no police officer can require attendance of a witness if he is a male under the age of fifteen years or above the age of sixty five years or a woman or a mentally or physically disabled person at any place other than the place where such person resides.

Section 161 (Cr.P.C, 1973)

Section 161 has been amended by inserting one more proviso stating "that the statement of a woman against whom an offence under Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer".

Section 164 (Cr.P.C, 1973) Section 164 has been amended by inserting Sub Section (5A) (a), that when an offence as stated in that Sub Section has been committed and as soon as the commission of the offence is brought to the notice of the police, the Judicial Magistrate shall record the statement of the victim in the manner prescribed in sub Section 5. It is

also provided that the Magistrate shall take assistance of an interpreter or special educator if required. In such cases that shall be videographed. Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement: Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed. A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.

Section 357 C.(Cr.P.C, 1973)

Section 357C has also been inserted that all hospitals, public or private, whether run by the Central Government, the State government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Section 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.

Section 119 (Indian Evidence Act, 1872) This section provides that a witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence: Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement and such statement shall be videographed.

F. The Rights of Persons with Disabilities Act, 2016 Section 105 Punishment for offences of atrocities.

Whoever, ...

- (b) assaults or uses force to any person with disability with intent to dishonour him or outrage the modesty of a woman with disability; ...
 - (d) being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually; ...
- shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

Inconsistency with Section 354 of the Indian Penal Code, 1860 in terms of penalty.

Section 6 Protection from abuse, violence and exploitation

1. The appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation, and to prevent the same, shall—

- a. take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents;
- b. take steps for avoiding such incidents and prescribe the procedure for its reporting;
- c. take steps to rescue, protect and rehabilitate victims of such incidents; and
- d. create awareness and make available information among the public.

Case Studies

1. A 'dumb and deaf woman of 35 to 40 years of age, wife of a poor 'Rikshawala. is the victim of rape by three persons at 10 P.M. in the Ram Nivas Bagh of Jaipur. The accused claims to be a student and young boy of 19 years of age. On the night of 9th May, 1981, Laxmi, a 'deaf and dumb' woman, wife of Arjun was coming back to her house after attending a marriage at Brahampuri at about 11.00 p.m. in the night. Ram Dhan Meena and one Sardar and one more person forcibly compelled her to get down from the Rickshaw and after taking her in some dark place, all the three accused forcibly committed sexual intercourse with her. The prosecutrix narrated the story to the husband in the night at about 1.00, and both of them went to the police station and produced the clothes having semen before the police and lodged the report, Laxmi was examined as she was deaf and dumb, she narrated the story with signs.²³
2. Feb 29, 2012, A teenaged deaf and dumb patient whose family complained that their daughter had been raped by a junior doctor at the Bankura Sammilani Medical College Hospital, she was taken by the hospital staff to Kolkata for forensic tests. A three-member committee had been set up to probe the complaint. Superintendent of Police Pranab Kumar said, "It is difficult for us to investigate because the victim is deaf and dumb and we need an interpreter."²⁴
3. Feb 2, 2014, in North Kolkata's Cossipore, a 16-year-old physically challenged girl who was allegedly lured, then abducted and locked in a house before being raped. The survivor was tied up in a bed and was in a half-naked condition at the time of rescue. The accused SkAshfar Ali, a 26-year-old auto driver, was arrested. The accused knew the victim earlier and had lured her to follow him. However, he has denied the offence of rape and admitted that he had molested her.²⁵
4. August 15, 2013, in Mukund Vihar, Bhalswa Dairy area of northwest Delhi a 12-year-old mentally challenged girl was allegedly raped by her neighbour aged 43 years, who has physical disabilities. When the victim was playing, the accused enticed her to follow him to the shop's godown. He then downed the shutter and raped the girl.²⁶
5. January 12, 2013, a physically handicapped married woman was allegedly raped at Padma, Hazaribagh, Jharkhand. The accused, Ajit Kumar raped the woman near Padma power station in the evening hour when the victim was returning

home after depositing her pension cheque in a bank.²⁷

6. One Jashiben, wife of UmedbhaiDahyabhai Solanki, lodged an FIR with Madhavpura Police Station, alleging that her niece Bhavna (not real name) was raped by Maheshbhai Ramjibhai Parmar in the midnight hours of 26-27th June, 2002. In the FIR the informant states that she was informed by the prosecutrix around 4.00 p.m., of 27.6.2002 about the incident saying that at about 12.00 p.m. in the midnight, the accused went to the cot, where the prosecutrix was sleeping, and gagged her mouth and raped her.²⁸
7. 15th November 2013, in Nagpur, a 40- year-old mentally unstable and physically challenged woman was allegedly raped in Dammanand Nagar locality in the city. The accused, identified as 35-year-old Ramsingh GopisinghMehto had been arrested under relevant sections of the IPC.²⁹
8. On November 21, 2013, a five-year-old physically challenged girl was reported as a rape victim. She was raped by a 24-year-old in BeldaraSeoni village in Raipur, Chhattisgarh, a village which is about 40 km away from the state capital. The accused, identified as Sanjay Verma, was arrested immediately after the incident. The girl, whose mother died during childbirth, was living with her grandparents. When her grandparents were away for work, the accused entered the house and sexually assaulted her. It was because of her shrieks that the neighbours came to her rescue.

Analysis

It is noted that in most cases the victim was raped by people whom they knew before the commission of rape. In many instances the perpetrators are close relatives of the victim, including the father. It can also be observed that in most cases the victims were raped when they are alone and unprotected. In cases of rape of minors, it can be noted that the minor child victims were allured and enticed by the adult accused.

There exist major problems with regard to evidence in cases of rape of disable female child/women. For example, in various cases disabled women are unable to communicate the act of sexual assault they suffered and even if they do manage to communicate it, the evidentiary value of their testament are not taken seriously either by the police or by the judicial system, consequently, even if the accused is convicted by the lower court, at the stage of appeal before Higher Court, the accused is acquitted owing to the non-recording of the prosecutrix' testimony or non-observance of the legal procedure by the court below.

In a recent case the Supreme Court of India reiterated that there is nothing, in law or otherwise that prevents a deaf and mute person from being competent and credible witness. But having said that, the Court finally refused to rely on the testimony of the wife of the deceased, who was deaf and mute and who was an eyewitness to the incident, on the grounds that the interpreter of her testimony during

the trial was her father. Since the father was an 'interested party' in the case, the Court reasoned that relying on her interpretation of witness testimony would have made the verdict biased. Given the unavailability of professional interpreters in public institutions such as courts, the prosecution often turns to special education teachers are not available, family members of the witness step in as interpreters. This judgment while affirming the evidentiary value of the testimony of a disabled witness, also points to the ad hoc arrangements that exist to record such testimony in legally relevant manner.³⁰

The Supreme Court of India has again and again expressed anguish at the repeated rape of a mentally challenged woman and observed that in such case, apart from physical violence, there is also "exploitation of her helplessness". Justice Arijit Pasayat drew attention to the fact that while Section 376 (2) (f) of the Indian Penal Code prescribing higher penalty for rape of a woman below 12 years of age, it is exigent on the legislature to prescribe a higher penalty for the rape of a mentally challenged woman whose mental age may be less than 12 years.³¹

Thus, it is now onerous on the Legislatures to come up with the legislations which are sensitive to the needs and requirements of disable women in order to dispense justice in form and spirit to the disable women.

Conclusion

Disabled women in India have in general been silenced within the society through constant denial of rights and equal economic and social opportunities. It is assumed that they are incapable of handling marriages or even a maternal role, a basic instinct in all women, and hence too often undergo forced Sterilization.

Sexual violence is a serious problem for women with disabilities. In majority of cases, women fail to even realize that they have been victims and even fails to communicate the act or nature of violence. Even if it is communicated it rarely inspires belief. It is generally found that the perpetrators are often not brought to books. There is also fear that reporting the abuse could snags bonds with the caretaker and it can be safely said that most cases of sexual violence and abuse, especially against disabled women, go unreported and therefore, remain unaddressed.

The current legal framework governing the rights of disabled women against sexual violence from the generic provisions of the Indian Penal Code, 1860 to the more recently enacted Rights of Persons with Disability Act, 2016, cover a range of provisions including certain incorporated provisions of the existing international conventions. However, sexual abuse of disabled women is absent from the generic criminal codes/legislations. And similarly, there is an absence of recognizing the gravity of the violations of rights of such disabled women in cases of sexual abuse and violence in legislations dealing with disability. It merely has a periphery role and only outraging the modesty of the woman finds an express mention in the 2016 Act. There has been a neglect on the part of the State to address other issues such as

sexual harassment and abuse, rape and grievous hurt and issues relating to domestic violence.

Thus, there is an urgent need to have a comprehensive gender sensitive disability law in India covering all issues including sexual violence of women. Hence, by way of legislating laws, state should not merely declare rights and entitlements but it should stipulate in detail the mechanisms by which such rights can be realized.

Remedial Measures

1. There is a need for the enactment of gender-sensitive disability law in India which must comply with the requirements of the Convention on Rights of Persons with Disabilities.
2. Persons with disabilities, especially women should be able to access complaints and redressal mechanisms. In the absence of appropriate and accessible complaint mechanism, increasing the penalty for sexual violence will have no substantive outcomes,
3. There are no consolidation figures with regard to violent against women with disabilities. It would therefore be pertinent that when such cases are registered, crime against women with disabilities be also recorded as sub-category like in the case of crimes against women from scheduled castes, scheduled tribes etc.
4. Training and sensitization of police officers, judiciary and medical professionals on issues concerning persons with disabilities, particularly the violence they face, should be made mandatory.
5. There must be a standard procedure for investigation and medical examination adopted by the investigative agencies while investigating cases of sexual assault. These procedures should be formulated on the basis of specific needs of women with disabilities, at each stage of the investigation.
6. A large number of women with disabilities are abused within institutions like hospitals and shelter homes. A monitoring and regulatory authority needs to be established at the district level consisting of activists and specialists from the district who will have visiting rights and access to these places for regular checkups. Periodic inspection of these institutions by the authority so established should be made mandatory.
7. Forced or non-consensual sterilization must be criminalized. Necessary legislation must be enacted to clarify the legal issues arising from sterilization. Such intrusive surgeries amount to a violation of the right to life and physical integrity. The victim of forced sterilization must be duly compensated.
8. Victims of sexual violence have to be provided with adequate and appropriate counseling facilities. In the case of a victim getting pregnant consequent to sexual abuse, appropriate counseling and options should be offered to the victims.
9. Disability studies should be included in the academia as a distinct subject both at the

elementary level and higher education curriculum to develop awareness and understanding of disability, disability rights amongst the disabled as well as non-disabled people.

10. The state should provide accessible free legal aid to women with disabilities who belong to socially and economically backward classes/ SCs/STs.
11. The Indian Penal Law needs to be more strengthened to prevent sexual violence against women with disabilities.

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