

Examining Sexual Exploitation And Abuse Of Women With Disabilities: A Legal And Social Study

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ABSTRACT

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 to undergo sterilization. Sexual Violence and abuse are serious problems for persons with disabilities, especially for women with disabilities, who are at greater risk than non-disabled persons. 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.”

“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.” The social context of disability, including factors such as inaccessibility, reliance on support services, poverty and isolation, has a powerful impact on individuals’ increased risk for violence.

KEYWORDS

Women with Disabilities, Sexual Exploitation, Sexual Abuse, Gender-Based Violence, Disability Rights, Social Discrimination, Women’s Empowerment

1. INTRODUCTION

Violence against women and girls with disabilities is a significant issue that is related to both gender- and disability-based discrimination and exclusion. Combined, these two factors result in an extremely high risk of violence against girls and women with disabilities¹. 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 life³.”

Discrimination towards people with disabilities, coupled with attitudes towards women in patriarchal societies, put women and girls with disabilities at 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.

Violence against women with disabilities can range from neglect to physical abuse to denying them even the traditional roles of marriage and childbearing. The Indian legal framework has to be strengthened to bring it in line with international legislations on the rights of disabled women. Concerns of women with disabilities continue to remain marginal in India. They have neither been espoused by the feminist movement nor the disability movement and have largely remained “hidden” and “silent”. Women with disabilities face discriminatory treatment vis-à-vis women and men without disabilities, and men with disabilities. According to the Indian Census of 2001, women constitute 42.457% of the total population of persons with disabilities

¹ The 57th Session of the Commission on the Status of Women. February 2013

² World Health Organization: http://en.wikipedia.org/wiki/Sexual_violence#cite_note-WHO_definition-1
Criminal_Law_(Amendment)_Act,_2013 World Report on Violence and Health 2002. (n.d.)

³ General Assembly resolution 48/104 of 20 December 1993

⁴ Ortoleva, S and Lewis, H. 2012. Forgotten Sisters - A Report on Violence Against Women with Disabilities: An 13 Overview of its Nature, Scope, Causes and Consequences

in India. Despite the numbers, their voices remain unheard and the existing legal framework fails to address specific problems faced by women with disabilities⁵.

2. RESEARCH QUESTION AND OBJECTIVE

- To examine the nature, extent, and common forms of sexual exploitation and abuse faced by women with disabilities and to identify the major patterns of victimization.
- To analyze the effectiveness of existing laws and policies enacted for the protection of women with disabilities and to examine the challenges in reporting, investigation, prosecution, and access to justice.
- To identify the social, cultural, legal, and institutional factors affecting the implementation of laws and the barriers faced by women with disabilities in reporting sexual exploitation and abuse.
- To suggest suitable legal, social, and rehabilitative reforms for strengthening protection mechanisms, ensuring justice, promoting empowerment, and facilitating rehabilitation of women with disabilities.

3. FORMS OF DISCRIMINATION

Women with disabilities have been consistently denied the traditional roles assigned to women. It is assumed that they are incapable of undertaking family responsibilities or obtaining gainful employment. In India, where female foeticide is rampant and the girl-child is unwelcome, a disabled girl-child is at the receiving end of even more contempt and neglect. From the time they are children, persons with disabilities are mostly socialised into dependence, requiring constant monitoring or supervision and never encouraged to take care of themselves or think independently. Such dependence increases their vulnerability and is used to justify their inability to found a family. They are also regarded as “asexual”, leading to the repression of their sexual identity. Anita Ghai, a leading disability rights activist, notes that while she was growing up she was, most unusually, allowed to share a room with her male cousins, thus prompting the conclusion that she was “desexualised”⁶.

4. THE CRITICAL AREAS OF CONCERN

⁵ Ministry of Home Affairs, Government of India, Census of India, 2001 Table 1: Distribution of the disabled by sex and 15 residence – 2001 (India, States and Union Territories) http://www.censusindia.net/disability/disabled_population.html

⁶ Laura Hershey, ‘An Interview with Dr Anita Ghai, One of India’s Advocates for Rights of Disabled Women’, Disability 17 World Issue No.8 May-June 2001 http://www.disabilityworld.org/09-10_01/women/ghai.shtml

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

A. VIOLENCE WITHIN FAMILY

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 may not be taken seriously or disbelieved entirely due to stigma and stereotyping. Moreover, barriers to accessing justice for women with disabilities further complicate their ability to seek redress and protection⁷.

Domestic Violence

In domestic violence situations, women with disabilities may fear leaving 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.⁸

In both cases, their vulnerability increases to more sexual abuse in the society by their unprotected and homeless state of being.

Incest

Sexual relations between persons who are so closely related that their marriage is illegal or forbidden by custom. The crime of sexual relations with a person defined by statute as too closely related. The authors studied several psychosocial, psychosomatic, and psychodynamic factors in female psychiatric patients who had been victims of incest. Abuse was almost exclusively severe and prolonged. Three quarters of the female patients had been abused by their biological fathers or stepfathers. Sexual abuse experiences in childhood are connected with feelings of anxiety, helplessness, and powerlessness.

⁷ <http://womenenabled.org/pdfs/mapping/Women%20with%20Disabilities%20in%20India.pdf> “WOMEN WITH DISABILITIES IN INDIA

⁸ Malyala Manoram, 2011

Together with a lack of support on the part of the mother, these experiences lead to ego weakness, an autoplasmic mode of coping with aggression and to patterns of objectal relationships which predispose them to object loss. The links between a girl's traumatic experiences in relationships and her vulnerability to separation in later life and their importance for the incidence of mental disorders, will be discussed on the basis of Bowlby's attachment theory.

Dowry

As defined under section 2 of dowry prohibition act, 1961, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly: ○ by one party to a marriage to the other party to the marriage; or ○ by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law.

B. 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.

Female Mutilation (FGM)

FGM is the name given to procedures that involve altering or injuring the female genitalia for non-medical or cultural reasons, and is recognised internationally as a violation of human rights and the health and integrity of girls and women. It is sexual violence by which many women are affected at present also this type of practice is continue⁹.

Rape

Rape is fourth most common violence against women in India as Bhartiya Nyay Sanhita 2023 defines rape under section 63 as an offence. Sometime it is committed by a person who is not intimately related with victim within community section 64 to 71 provide different type of punishment for accused of rape.

Sexual Harassment

Sexual harassment is a type of harassment involving the use of explicit or implicit sexual overtones, including the unwelcome or inappropriate promise of rewards in exchange for

⁹ The Secretary-General, In-depth study on all forms of violence against women, 41, delivered to the Division for the Advancement of Women of the Department of Economic and Social Affairs of the United Nations Secretariat, U.N. Doc., available at <http://daccess-dds>

sexual favors. Sexual harassment includes a range of actions from verbal transgressions to sexual abuse or assault. Harassment can occur in many different social settings such as the workplace, the home, school, churches, etc. Harassers or victims may be of any gender. In the workplace, harassment may be considered illegal when it is frequent or severe thereby creating a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim's demotion, firing or quitting). The legal and social understanding of sexual harassment, however, varies by culture.

Child Marriage-

Child marriage is a form of violence because it violates a girl's basic rights. Because getting married usually means an end to formal education. Because child marriage can be a precursor to a death sentence: child brides often become pregnant at a young age, long before they are ready physically or emotionally, and this can have devastating consequences. In fact, complications during pregnancy and child births is the second most common cause of death for 15- to 19-year-olds globally. Ironically, one of the drivers of child marriage is the belief that a girl will be 'safer' if she is married, and that marriage will protect her against physical and sexual assault. The very opposite is true. The 15 million girls married every year around the world are at particular risk of physical, psychological.

C. 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 private 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 run 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 carers towards issues of abuse only compounds the problem¹⁰.

CUSTODIAL TORTURE

The treatment of women in custody is no less concerning, women in police custody always have the threat of rape and sexual assault along with other forms of physical torture, not only from police officials but also male inmates, and even more so if they are of lower caste or economically disadvantaged. For example, from 3rd to 7th July 2019, a 35-year-old Dalit woman was allegedly illegally detained, subjected to torture and was raped in police custody by nine police personnel at Sardarshahar police station in Churu district, Rajasthan. Beside custodial rape, the victim was also allegedly subjected to torture including plucking of her nails.

5. BACKGROUND AND LEGAL FRAMEWORK

Persons with Disabilities in India Estimates of the size of the population with disabilities in India differ greatly. India's Census 2011 reports that 2.21 percent of India's population, or 26.8 million people live with disabilities. The World Health Organization and World Bank report that 15 percent of the global population lives with some form of disability; 12 percent of males and 19 percent of females. This discrepancy between Indian and international estimates can be attributed to discordant definitions of disability, lack of awareness and stigma especially for women and girls, which results in under-reporting¹¹.

Under-representation in Indian census data contributes to exclusion from other government data sources. The National Family Health Survey and the National Crime Records Bureau do not include disaggregated data for persons with disabilities. In 2014, the United Nations Special Rapporteur on Violence against Women, Rashida Manjoo, recommended disaggregated data collection not only on disability, but also sex, age, caste, religion, language and other relevant criteria. The lacuna in counting persons with disabilities¹².

¹⁰ <http://womenenabled.org/pdfs/mapping/Women%20with%20Disabilities%20in%20India.pdf>

¹¹ Office of the Registrar General & Census Commissioner, India, "Presentation on Disability, Census of India 2011: Data on 43 Disability," December 27, 2013, <http://censusindia.gov.in/>; B Sivakumar, "Disabled population up by 22.4% in 2001-11," Times of India, December 29, 2013, <http://timesofindia.indiatimes.com/india/Disabledpopulation-up-by-22-4-in-2001-11/articleshow/28072371.cms>

¹² WHO World Report on Disability, 2011, details the challenges associated with national census and survey-based 46 approaches to measuring disability and provides detailed guidelines on how to improve census

Sexual Violence against Women and Girls with Disability's- While there is no national disaggregated data on violence against women and girls with disabilities, senior government officials recognize this population faces heightened risk of violence, including sexual violence. In December 2015, based on her consultations with disability advocates and experts, then-chairwoman of the National Commission for Women, Lalitha Kumaramangalam, said: "Regardless of the type of disability, incidents of rape with disabled women are much higher than with other women¹³."

India has a dearth of population-based prevalence studies on sexual violence, especially those focused on women and girls with disabilities. However, studies by academic and nongovernmental organizations provide some insight. For example, a 2004 survey across 12 districts and 729 respondents in Odisha state found that nearly all of the women and girls with disabilities surveyed were beaten at home, and 25 percent of women with intellectual disabilities had been raped. A 2011 study found that 21 percent of the 314 women with 50 disabilities surveyed experienced emotional, physical or sexual violence from someone other than their intimate partner.

Protections under the Rights of Persons with Disabilities Act, 2016 The 2016 Rights of Persons with Disabilities Act marks a significant shift from the Persons with Disabilities Act, 1995. More closely in line with the CRPD, the legislation defines persons with disabilities to include "impairments," known as "scheduled disabilities," that are certifiable and eligible for various entitlements under the law. This is a significant increase from the seven "impairments" listed under the 1995 legislation¹⁴. Addressing sexual violence against women and girls with disabilities, the 2016 law prescribes imprisonment and fines for anyone who would "outrage

outcomes. "Censuses cover entire populations, occur at long intervals, and by their nature can incorporate only a few disability-relevant questions. While considerable socioeconomic data, such as employment rates and marital status, are available from censuses, they can provide only limited information about participation." The report highlights the potential of surveys if used well: "Surveys have the possibility of providing richer information through more comprehensive questions, including on institutionalized populations. [F]or example, survey questions identify people with disabilities for impairments in body function and structure, but also increasingly for activities, participation, and environmental factors. Some surveys also provide information on the origins of impairments, the degree of assistance provided, service accessibility, and unmet needs." World Health Organization and World Bank, "World Report on Disability 2011," http://www.who.int/disabilities/world_report/2011/report.pdf, p. 22

¹³ One of the biggest challenges for disabled women is access: Lalitha Kumaramangalam," Livemint, <http://www.livemint.com/Politics/0WeOf0TABf6efNnuNF8nPJ/One-of-the-biggest-challenges-for-disabled-women-isaccess.html>

¹⁴ Rights of Persons with Disabilities Act, 2016, no. 49 of 2016, Schedule, p. 33-35

the modesty of a woman with a disability.” It also protects all persons with disabilities from all forms of abuse, violence and exploitation, with specific measures to be taken by appropriate governments, executive magistrates and the police. These measures include establishing procedures for reporting violence against persons with disabilities, creating public awareness, and ensuring that persons with disabilities have the protection, free legal aid, and connections with disabled persons organizations that they need to seek relief.

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 nondiscrimination. 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 endeavour 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 capacity¹⁵. 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 statute¹⁶.

6. SEXUAL VIOLENCE: IN THE PERSPECT OF HUMAN RIGHTS

Rape, sexual assault and violence against women are severe human rights violations, yet they remain widespread around the globe. Although men and boys experience gender-based violence as well, women around the world are disproportionately affected by sexual violence, both during peace and wartime.

¹⁵ Available at http://en.wikipedia.org/wiki/Directive_Principles_in_India#cite_note-art41-15

¹⁶ Kothari, J. (2012). The Future of Disability Law in India. Oxford University Press.

According to the World Health Organization, more than 35 percent of women experience physical and sexual violence throughout their lifetime. Sexual assault and rape are extremely traumatizing, with life-long repercussions for the victim's health and well being.

Women who have experienced intimate partner violence are significantly more likely to have alcohol-use problems, to suffer from depression, or to acquire HIV and other sexually transmitted diseases. In addition, the prevalence of violence against women has adverse effects on economic growth and development. Estimates of the economic costs of gender-based violence in terms of lost productivity as well as increased health care costs range from 1.2 to 2 percent of GDP, which amounts to as much as many governments of developing countries spend on primary education¹⁷.

Right to be free from all forms of Discrimination: Sexual violence or rape is considered as discrimination on the basis of sex and it interferes with the women's ability to function as full citizens. The non-discrimination clause is seen significant as it is specified in almost all human rights instrument with the assumption that, human rights are universal and all human beings have human rights since they are 'born free and equal in dignity and rights' (UDHR Art. 1).

The Right to Life: The right to life is considered the most significant of all rights since it protects the individual's ability to act for the preservation and enjoyment of life. The gender based violence such as rape consists of severe sexual and physical assault, which in most cases causes death. Rape is mostly seen as a sexual behavior as the violence involved in it is ignored.

The Right to Bodily Integrity: Nussbaum in her Capability approach, has place bodily integrity under the Central Human Functional Capabilities and describes it as, 'being able to move freely from place to place; being able to be secure against violent assault, including sexual assault, rape, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction'(Nussbaum 1999: 55). Rape or sexual violence violates a person's right to bodily integrity since in most cases it is mostly exercised over women without their valid consent and it also affects the victim's physical and psychological health (Mcanulty and Burnette 2006: 102-104). The Universal Declaration of Human Rights (UDHR) Article 5, points out that no one shall be subjected to torture or to cruel, inhuman or degrading treatment

¹⁷ <https://wapp.hks.harvard.edu/human-rights>

(Brownlie 2010: 41). Furthermore, the right to be free from sexual violence is a universal human right of human beings

Rape victims have a high risk of HIV/AIDS, which is a threat to their right to life especially when raped by strangers. The right to life is specifically mentioned in the International Covenant on Civil and Political Rights (ICCPR); Article 6 (1) states that ‘every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life’ (Brownlie 2010: 391). However, the Universal Declaration of Human Rights (UDHR) also maintains that every human being has the right to life, liberty and security of persons in the Article 3 (Brownlie 2010: 41).

7. BARRIER IN THE CRIMINAL JUSTICE SYSTEM

Women and girls with disabilities, like others who experience sexual violence in India, face numerous barriers to accessing justice. These include stigma and victim-blaming, challenges in reporting, and poor access to support services, including timely medical treatment, counseling, and legal aid. In India, women and girls with disabilities face a heightened risk of sexual violence.

They may find it more difficult to escape from violent situations, call for help, or have additional problems communicating abuse. Many do not even know that non-consensual sexual acts are a crime and should be reported. Because of the stigma associated with sexuality and disability, access to justice is particularly difficult for women and girls with disabilities¹⁸.

As a result, they often do not get the support they need at each stage of an already-daunting justice process: reporting the abuse to police, getting appropriate medical care, navigating the court system, and seeking compensation. These barriers are often exacerbated for women and girls with disabilities due to a lack of accommodations, and failure to account for disabilities by police, medical and court professionals, even when families, their lawyers, and engaged organizations identify disabilities and corresponding needs.

For some women and girls with disabilities, reasonable accommodations - changes in ordinary procedures or practices to meet the needs of a particular person - are key in reporting sexual violence. In many cases, provisions requiring police officers and court officials to provide

¹⁸ For an overall account of the challenges faced by women and girls who face sexual violence in India, 12 <https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriersjustice-and-support-services-sexual-assaultsurvivors>.

accommodations were simply not followed, even in cases in which women and girls had severe and visible disabilities and injuries that they reported to the police from the start.

8. 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, especially, is a serious problem for women with disabilities. It can be succinctly described as a silent “act” in our country. In majority cases, women fail to even realize that they have been victims or fail 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 book. There is also fear that reporting the abuse could snap bonds with the caretaker and it is a safe bet to say that most of the cases of sexual violence and abuse, especially against disabled women, go unreported and therefore, remain unaddressed. Lack of information and awareness is often witnessed, evidenced by the fact that peer group learning is very limited amongst disabled women as they are less likely to be sent to school. The limited social role or the absence of a role altogether attributed to women with disabilities, along with the stereotypes that exist, play a significant part in adding to their vulnerability and lead to violation of their rights.

9. SUGGESTIONS

A multifaceted strategy that tackles institutional, social, and legal flaws is needed to address the problem of sexual exploitation and abuse of women with disabilities. Several important recommendations can be made to guarantee the successful protection and empowerment of this vulnerable population in light of the gaps that have been found in both literature and practice.

First and foremost, the Rights of Persons with Disabilities Act of 2016 must be strengthened. The Act offers a thorough framework for defending the rights of people with disabilities, but at the local level, its implementation is still lax. Its rules, especially those pertaining to protection against abuse, aggression, and exploitation, must be strictly adhered to. To assess the success of implementation, independent oversight organizations, accountability structures, and regular monitoring systems should be put in place.

Second, the criminal justice system needs to be made more accessible and inclusive. Ramps, accessible communication systems, and trained staff are examples of disability-friendly infrastructure that should be installed at police stations, courts, and legal aid services. To ensure that victims can properly express their experiences, special educators, support personnel, and sign language interpreters must be included during the investigation and trial. To eradicate discriminatory attitudes and guarantee compassionate handling of cases involving women with disabilities, police personnel, judges, and prosecutors should be required to participate in sensitization sessions.

Further studies and data gathering are required in this field. Effective policy-making is hampered by the dearth of trustworthy statistics on sexual assault of women with disabilities. To comprehend the frequency, type, and effects of such abuse, government organizations and academic institutions should carry out thorough investigations. The problem can then be more successfully addressed by developing evidence-based policy.

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