

Legal Provisions for Women with Disabilities

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Abstract

Women with disabilities face multiple discriminations and have lived experiences distinct from those of non-disabled women and of other persons with disability. However, such experiences have remained largely invisible in law and policy making. To combat double discrimination faced by women and children with disabilities, the CRPD has adopted a twin track approach, where a dedicated provision has been provided for the vulnerable group, and at the same time, their concerns have been addressed in several other provisions of the Convention. India has signed and ratified both CEDAW and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). As these two intersect and reinforce each other in the context of rights of women and girls with disabilities, effort will be made to create the necessary synchrony and synergy by referring to both. This paper looks at the specific concerns of women with disabilities, in the context of the society and examines how legislation on the rights of persons with disabilities should address these concerns. It provides a general dedicated provision on women with disabilities to be incorporated in the legislation, and examines all other areas of the law where gender concerns need to be specifically addressed.

KEYWORDS: Women, Disabilities, Provisions, Legislation, CRPD, CEDAW

Introduction

Throughout centuries, the disabled have been oppressed marginalized and stigmatized in almost all societies. They constitute a section of the population, which is most backward, least served and grossly neglected. Persons with disabilities are the poorest of the poor and weakest of the weak, who have been socially, educationally and economically disadvantaged; thus having customarily denied their right to self-assertion, identity and development. Women and girls are reported to be the largest group in the global disability population, and they have been historically subject to discrimination both on grounds of their disability and gender.ⁱ

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.ⁱⁱ 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. The plight of women with disabilities is not the simple sum of the barriers faced by people with disabilities and the barriers faced by women. The combination of their disabilities and inferior status as women goes beyond the mechanical doubling of discrimination to a situation of utter social alienation and policy neglect. Women with disabilities have remained invisible in legislative and policy efforts at both national and international levels.ⁱⁱⁱ Women with disabilities have been excluded from both the disability movement and feminist movement.^{iv} Like most other social change movements, disability movement has directed its energies primarily towards male

experiences. It has traditionally ignored the relevance of gender and other social dimensions like race, class, ethnicity, etc. Thus, policies and practices have not been designed to meet the specific needs of women with disabilities.^v

In a country where gender-based discrimination is pervasive, women and girls with psychosocial or intellectual disabilities in particular face multiple layers of discrimination – on account of their disability and gender – and are thus among the most marginalized and vulnerable to abuse and violence. Often shunned by families unable to take care of them, many end up forcibly institutionalized. The process for institutionalizing women and men in India is the same. But women and girls with disabilities face unique challenges – including sexual violence and denial of access to reproductive health – that men do not. Approximately 300 million women around the world have mental and physical disabilities. Women constitute 75 percent of the disabled people in low and middle income countries. Women with disabilities comprise 10 percent of all women worldwide. Women are more likely than men to become disabled during their lives, due in part to gender bias in the allocation of scarce resources and in access to services. When ill, girls and women are less likely to receive medical attention than boys and men, particularly in developing countries where medical care may be a considerable distance from home. They are also less likely to receive preventive care, such as immunizations. Due to social, cultural and religious factors, disabled women are less likely than men to make use of existing social services, including residential services, and it is estimated that disabled women worldwide receive only 20 percent of the rehabilitation. A study in the Asia Pacific region found that more than 80 percent of disabled women had no independent means of livelihood, and thus were totally dependent on others. According to the World Health Organization, girls with disabilities may be more readily institutionalized than boys.

Women with Disability

Disabled women are the most vulnerable in Indian society. This vulnerability exists across class and caste. The research finds that disabled women are double disadvantaged due to gender discrimination and their impairment (Naami et al., 2012)^{vi}. Male preference for labour-intensive agriculture occupation has deprived them from employment in the village. Furthermore, their engagement in household work is not valued as productive work. It has been found that disabled women are deprived of their share in parental property due to gender discrimination. It is evident that disabled women are deprived of education and employment due to gender bias, social stigma and parental attempt to protect them from exploitation. Furthermore, the ignorance and powerlessness of disabled women restricts their livelihood options and increases their dependence. In India disabled women constitute around 42 per cent percent of the total disabled population. They are most marginalized in terms of their social, economic, political and health status.

Women with disabilities live with discrimination of greater magnitude when compared to their male counterparts in India. Mehrotra (2004)^{vii} in a study of disabled women in rural Haryana observes that disability becomes an additional burden on the gendered position, demanding them to cope with twin identities – women and impaired. Ghai (2001)^{viii} while highlighting the deep rooted social discrimination against the

impaired women observes that 'for poor families with a hand-to-mouth existence the birth of a disabled child or the onset of significant impairment in childhood is a fate worse than death'. Quoting a Hindi phrase '*ek to ladkioopar se apaahij*' (which means 'one, a girl and that too disabled') to highlight the discrimination against disabled women, Ghai (2002)^{ix} maintains that in a culture where a daughter is considered a curse, a disabled daughter is considered as a fate worse than death. Various challenges are faced by women with disability:

- Women with disability suffer on both accounts, for being women and also for being disabled. The government and the civil society do not adequately take up their causes. Women's movement in India has not specially looked into the problems of the disabled. The government programs either take women as a homogenous group or disabled as another group. Programs especially for the disabled women, cutting across all identities is not available. This is a priority and needs to be taken up.
- Within the disabled women's organization also the focus is on women with physical or visual disabilities. Adequate attention is not paid to the women with other disabilities such as mental illness and cerebral palsy. Growing number of cases of mental illness make it all the more important to be taken up specifically.
- Awareness and education has to be facilitated about disabled women and their rights. Efforts should be made to promote a positive attitude towards women with disability.
- Women are to be provided with career-oriented education, job reservation, credit facilities to start entrepreneurship and other forms of economic self-reliance.
- The health system should be geared to address the needs of the disabled women. Among other rights they should have the right to control their own fertility. Accessible, well equipped resource centers and clinics that will provide information on the issues affecting the disabled women should be made.
- The social security system should be geared towards the needs of the disabled women. Young women and disabled mothers should be brought under the ambit of the scheme. The entire program for rehabilitation should have a component of economic empowerment and a right-based approach to the same.
- Organizations like National Commission for Women, Human Rights Commission and other Civil Society Groups should be consulted before making policies for disabled women.
- More efforts should be made towards increasing the political participation of disabled women, the reason being, disabled women are the best to represent the interests of the disabled.
- Disability issue should receive political attention. The manifestos of political parties should mention the concerns of the disabled.

In order to overcome these challenges, the Government has introduced various welfare schemes to benefit persons with disabilities. As a matter of policy, Government has extended the rehabilitation programmes in the field of medical, education, psychological support etc., for persons with disabilities. Various provisions has been given to such people such as reservation of seats, financial institutions providing loans and assistance, provision of three wheelers, ambulatory services, armchairs, crutches etc., to disabled persons.

- **National Commission for Women in Protection and Empowerment of the Disabled**

Women encounter major difficulties in socialization, maintaining a peer group, holding on or acquiring a job and in general, process of reintegration into the mainstream of society. The stigma attached to a disability, the negative attitude of a family and the community at large, only serve to compound the problems faced by the women. Women by virtue of their sensitive nature are more vulnerable to mental and physical violations both within the family and outside. Thus, the National Commission for Women was constituted in January, 1992 under the National Commission for Women Act, 1990.

As per sample surveys conducted by the NSSO in 1981 and 1991, there were 136.74 lakh disabled persons in 1981, which rose to 163.62 lakh in 1991. According to the 1990 census, there were 55 million people above the age group of 60, of which about 27.2 millions were women. The focus in policy has shifted from the 'welfare' approach to the 'empowerment approach' in order to make the disabled self-reliant and production contributors to the national economy. The time is ripe to place thrust on the 'Human Rights Approach' in empowering the disabled. The National Commission for Women has taken some initiatives in respect of the visually handicapped women which are discussed as follows:

- **Visually Handicapped Women**

The planners and social workers of the country had been drawn to the problems of the handicapped from the very beginning but specific problems faced by the handicapped women did not attract their attention. The National Commission for Women, being concerned with the problems of the women, particularly those belonging to the special social groups and who have suffered neglect for long, directed its attention to the visually handicapped women. Since very little information is available about their problems, distribution and numbers, the Commission set up an Expert Committee to study the same and to recommend necessary measures to improve their status. This Committee came up with a set of following recommendations related to socio-economic development of the visually handicapped women:

1. Compile comprehensive directory on infrastructure available for persons suffering from the visual disability with gender segregated data and details of micro-level agencies involved.
2. Implement suggestions of Ministry of Welfare to convert at least one Government school into an integrated school.
3. Introduce a package programme into the plan for blind women covering infrastructure, special hostel facilities, scholarships etc.
4. Identify districts for special schools for blind girls, phased according to types of disability.
5. Make separate provisions in the central and state budgets for blind women.
6. Ensure increasing involvement of voluntary organizations for educating blind girls.
7. Introduce pension schemes for blind single women with separate provision for single disabled women in the scheme for blind women.
8. Set-up a separate trust for the visually handicapped women on the pattern of existing National Trust for mentally handicapped persons.

9. Issue circulation to all reputed industrial houses and associations by the Ministry of Welfare for encouraging employment of blind women in suitable places.
10. Set-up 'Sheltered Workshops' for blind women linked with the major industries.
11. Raise the present total reservation of three per cent for physically handicapped to five percent.
12. Immediately fill the posts already identified. Review the identification of additional posts by the new committee simultaneously.
13. The Ministry of Welfare may coordinate schemes of various ministries by establishing proper linkages.
14. Circulate vacancies reserved for the blind among the concerned NGOs for sponsoring candidates, since even the existing one per cent reservation for the blind has not been fully implemented.

- **Convention on the Rights of Persons with Disabilities (CRPD)**

The Convention on the Rights of Persons with Disabilities, the first internationally binding instrument on disability rights, acknowledges in its preamble, "the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the bases of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status".

It also recognizes "that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation" and emphasizes "the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities".

The substantive provisions of the Convention on the Rights of Persons with Disabilities pertaining to women with disabilities is summarised below:

- Article 3 (g) – Principle of equality between men and women.
- Article 6 – Responsibility of the State Party to recognise the multiple discrimination faced by girls and women with disabilities and undertake measures to "ensure the full and equal enjoyment by them of all human rights and fundamental freedoms", and to enable the realisation of the rights by ensuring "full development, advancement and empowerment of women".
- Article 16 – Protection from exploitation, violence and abuse. Ensuring of "gender sensitive support"; providing of "information and education on how to avoid, recognise and report instances of exploitation"; formulating women-centric policies and legislations to address violence, its identification, investigation, and punishment.
- Article 28 – Ensuring access of all, "in particular women and girls with disabilities...to social protection programmes and poverty reduction programmes".

India ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2007. Under the treaty, governments must respect and protect the right to legal capacity of people with disabilities and their right to live in the community on an equal basis as others. Forced institutionalization is prohibited. However, India's laws allow courts to

appoint guardians to take decisions on behalf of people with psychosocial or intellectual disabilities, without their free and informed consent, and India perpetuates a healthcare system where people with such disabilities are segregated in institutions instead of having access to support and services in the community.

- **Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**

The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) defines discrimination against women and while it 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.^x

The intersection between the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), both address legal capacity, access to justice, equal recognition before the law, gender and disability stereotyping, state due diligence obligations, among other issues. CRPD Article 6 adopts a gendered lens-recognizing the multiple and intersecting dimensions of women’s lives and Article 12 requires equal recognition before the law, or legal capacity. Article 13 includes the right to access to justice, requiring States to provide procedural and age-appropriate accommodations, to facilitate effective participation.” CEDAW Article 15 requires states to ensure that men and women have equal access to the legal system, ensuring legal autonomy. Because women with disabilities have rights under both CEDAW and CRPD, State Parties have a due diligence obligation to afford them full and fair legal capacity, and access to the justice system.

- **International Norms Concerning Women with Disabilities**

International instruments have also been adopted, and one of the main challenges has been to agree on a common definition of *discrimination against women* through these instruments, as States do not all agree on what constitutes discrimination. Roles may be assigned to women that vary from culture to culture, and these different cultural roles may or may not be discriminatory from one culture to the next.

— Rule 9.3 of **The Standard Rules on the Equalization of Opportunities for Persons with Disabilities** provides that States “...should promote measure to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of *girls and women with disabilities*, which still prevail in society.” (emphasis added).

— Article 45 of the **World Programme of Action concerning Disabled Persons** speaks of the special situation of women with disabilities. It speaks of social, cultural and economic obstacles that affect the health of women. Disabled women have a lack of access to health care, vocational training and employment.

- More general human rights instruments or instruments pertaining to women are also applicable to women with disabilities.
- The second paragraph of the **Charter of the United Nations** provides that the people of the United Nations are determined "...to reaffirm their faith in fundamental human rights in the dignity and worth of the person (and in) the equal rights of men and women..." Article 1 (3) sets out one of the purposes of the United Nations as: "...promoting and encouraging respect for human rights and fundamental freedoms for all without discrimination as to (...) *sex*...". Article 13 calls for the General Assembly to initiate studies and to make recommendations for the purpose of "...assisting in the realisation of human rights and fundamental freedoms for all without distinction as to (...) *sex*..." (emphasis added). Article 55 (c) provides that the United Nations shall promote "...universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to (...) *sex*..." (emphasis added). Furthermore, article 56 states that "...all members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55." As recognized since the 1970 Declaration on Principles of International Law, this creates a Charter-based duty to respect and to observe human rights.
- The Preamble of the **Convention on the Elimination of All Forms of Discrimination against Women** states that "...discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic, and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity." The Convention is also concerned that women in poverty have the least access to food, health, education, training, and opportunities for employment and other needs.
 - Article 1 gives a definition of discrimination against women: "the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".
 - Article 2 (a) provides that States Parties undertake to "...embody the principle of equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle." Article 2 (b) states that States Parties undertake "...to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women."
 - Different areas are covered in the convention: education (Article 10), employment (article 11), access to health care (article 12), and civil rights (article 15).

- The **International Covenant on Civil and Political Rights** specifically guarantees certain rights to women, lists a broad spectrum of rights to be applied equally to men and women, and prohibits all discrimination based on sex. Article 2 states that the rights recognised in the Covenant are to be recognised "...without distinction of any kind, such as (...) sex(...) or other status" (emphasis added). The term other status may apply to persons with disabilities. Article 3 speaks of the equal rights of men and women. Article 26 states that all persons are entitled "...to equal protection of the law regardless of (...) sex (...) or other status."
- Part II, article 2 (2) of the **International Covenant on Economic, Social and Cultural Rights** requires member States to "...undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (emphasis added). Part II, article 3 states that the Parties undertake to "...ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant." Part III, Article 7 of the ICESCR states: "...equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work." Article 10 states that special protection should be given to mothers during childbirth.
- The Preamble of the **Declaration on the Elimination of Violence Against Women** states "...that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, *women with disabilities*, elderly women and women in situations of armed conflict, are especially vulnerable to violence." Article 4 provides that States should condemn violence against women. Violence against women is defined as "...any act of gender based violence that results in, or is likely to result in physical, sexual or physical harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life." (article 1).
- The **Beijing Declaration** promotes fundamental human rights for women. Article 9 provides that the Parties are committed to: "...ensure the full implementation of the human rights of women and of the girl child as an alienable, integral and indivisible part of all human rights and fundamental freedoms." Article 13 speaks of the full participation of women in all spheres of society. Article 14 provides that women's rights are human rights. Article 17 is of significant importance in that it recognises a woman's right to control all aspects of her health. Article 26 addresses the problem of women and poverty. It states that the Parties are determined to "...eradicate the persistent and increasing burden of poverty on women...". Article 29 focuses on preventing and eliminating all forms of violence against women and girls. Article 32 provides that Parties commit to "...intensifying efforts to ensure equal enjoyment of all human rights and fundamental freedoms for *all women and girls* who face multiple barriers to their empowerment and advancement because of factors such as (...) *disability*."

- Paragraph 5 of the **Vienna Declaration and Programme of Action** states that human rights are universal, indivisible and independent. Paragraph 18 provides for the elimination of gender-based violence and all forms of sexual harassment and exploitation. In addition, it calls for the eradication of all forms of discrimination on grounds of sex.
- In **The Copenhagen Declaration and Programme of Action**, pursuant to Commitment 5, States Parties commit themselves to achieving equality and equity between men and women. At the national level, States will "...promote changes in attitudes, structures, policies, laws and practices in order to eliminate all obstacles to human dignity, equality and equity in the family and in society, and promote full and equal participation of urban and rural women and *women with disabilities* in social, economic, and political life, including in the formulation, implementation and follow-up of public policies and programmes...". Commitment 6 provides that States Parties commit themselves to ensure full and equal access to education for girls and women in order to obtain social equality.

Recommendations

While formulating legislations to implement the obligations under the Disability Convention, the following should be kept in mind:

- All persons with disabilities are entitled to human rights and their inherent dignity must be respected at all times.
- Disability must be added to the list of grounds on the basis of which discrimination is impermissible under Article 15 of the Constitution.
- By way of legislation, we should not merely declare rights and entitlements but stipulate in detail the mechanisms by which the rights can be realized.
- Forced or non-consensual sterilizations must be criminalized. Such intrusive surgeries amount to a violation of the right to life and physical integrity. The victim of forced sterilization must be duly compensated.
- Labour laws should be amended to provide for flexible working hours and leave for parents of children with disabilities or care-givers of other disabled family members. Liability must be imposed on day care centres, day schools, government or private institutions including hospitals that attempt to or commit non-consensual sterilizations or do so without having obtained the informed consent of the disabled patient.
- Persons with disabilities, especially women, should be able to access complaints and redressal mechanisms. In the absence of appropriate infrastructure and an accessible complaints mechanism, increasing the penalty for sexual assault will yield no substantive outcomes.
- All police training schools must introduce modules on disability sensitization. Existing members of the force should also undergo such sensitization, which can be conducted by recognized non-governmental organizations working on disability issues.
- Not only should a female officer handle a complaint of sexual assault, but she must also be aware of the problems of access and communication that a woman or girl with disability endures.

- The following rights of women with disabilities must be clearly recognized:
 - Right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment.
 - Right against forced or non-consensual sterilization or without informed consent.
 - Right to be protected against all forms of violence, whether in private or public, and sexual harassment at workplace.
 - Right to found a family.
 - Right to reproduction.
 - Right to adequate protection from surgical or drug trial interventions, especially in case of institutionalized women.
 - Right to approach the court of law, directly or through a friend or institution, for a violation of any of the above-mentioned rights.
 - Right to accessible legal mechanisms of seeking remedies for violation of rights.

Conclusion

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. It is hoped that such an approach would mainstream gender issues for girls and women with disabilities to an extent that gradually the need for adopting such an approach would get eroded. However, at present there is a need to adopt such strategies to ensure that women with disabilities are not neglected from policies and programmes.

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