

# Women with Disability in Context of Human Rights

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## ABSTRACT:

Disability is a natural phenomenon in the mode of physical, mental, intellectual or sensory impairments. Substantially of disability influence the life activities of a person. It may be occur from birth or during a person's lifetime. This article makes to attempt nature and consequences women with disability" in India and discussed about the convention on the rights of persons with disability (CRPD) Act. The Case laws also cited in the article for clear concept regarding the rights of the disable persons. The finding indicates that even the laws also discriminate with the disable persons. In case of women's disability in India, Disable women are sexually and physical abused and orphan then the condition is worse.

Keywords: Women's Disability, Physical Abuse, Sensory Impairment, CRPD Act

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## I. INTRODUCTION

Disability is a natural phenomenon in the mode of physical, mental, intellectual or sensory impairments. Substantially of disability influence the life activities of a person. It may be occur from birth or during a person's lifetime. A disability of Persons includes those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others<sup>1</sup>. Other hand Women are considered as the most suppressed section of the society and if they are "disable" then one can imagine how painful it could be for disable women to survive in the society. There are a numerous of acts which provide protection and safeguard to the disable person. "The rights of person with disabilities act,2016", the mental health care act,2017 and united nation convention on rights of persons with disabilities are the acts which gives rights and a number of safeguard to them. All these frequent acts the disable persons are deprived of their rights. Disability of Women is the most easy reach target for the perpetrators as they are having most sexual violence.

There are 9.3million disable women in India<sup>2</sup>.

One can say there is less incidences of sexual harassment with disable women but in reality it's the most because no one raise voice for them even their family. In family itself they are discriminated among the other normal child. Women with disability are sexually harassed by daily basis.

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<sup>1</sup> CRPD act.

<sup>2</sup> CENSUS 2001.

## II. ARTICLE 1 OF CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

### **Even laws also discriminate with disable person:-**

Under Hindu marriage act, 1955

Section-5 conditions for a Hindu marriage.

Under clause (2) at the time of marriage neither party

(a) is incapable of giving a valid consent of it in consequence of unsoundness of mind.

(b) giving a valid consent has been suffering from mental disorder of such a kind or to such a extent as to be unfit for marriage and the procreation of children.

(c) has been subject to recurrent attacks of insanity or epilepsy.

Under section 13 - grounds for divorce-

(3) has been incurably of unsound mind.

(4) has been suffering from a virulent and incurable form of leprosy.

(5) has been suffering from vulnerable disable in a communicable form.

### **According to section 2 clause(zc) of the rights of persons with Disabilities Act, 2016.**

The types of disabilities have been increased from existing 7 to 21 and the Central Government will have the power to add more types of disabilities. The 21 disabilities are given below:-

1. **Blindness**
2. **Low-vision**
3. **Leprosy Cured persons**
4. **Hearing Impairment (deaf and hard of hearing)**
5. **Locomotor Disability**
6. **Dwarfism**
7. **Intellectual Disability**
8. **Mental Illness**

9. Autism Spectrum Disorder
10. Cerebral Palsy
11. Muscular Dystrophy
12. Chronic Neurological conditions
13. Specific Learning Disabilities
14. Multiple Sclerosis
15. Speech and Language disability
16. Thalassemia
17. Hemophilia
18. Sickle Cell disease
19. Multiple Disabilities including deaf-blindness
20. Acid Attack victim
21. Parkinson's disease

### III. JUDICIAL DECISION REGARDING THE RIGHTS OF DISABLE WOMEN.

#### *Suchita Srivastava & Anr vs. Chandigarh Administration*<sup>3</sup>

The Court noted that a woman's right to make reproductive choices is a dimension of 'personal liberty', as understood under Article 21 of the Constitution. Reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration was held to be a woman's right to privacy, dignity and bodily integrity. Thus, restrictions could not be placed on the exercise of reproductive choice such as a woman's right to refuse participation in sexual activity or, alternatively, on her insistence on the use of contraceptive methods. Women are free to choose birth control methods such as undergoing a sterilization procedure. It was observed that reproductive rights include a woman's entitlement to carry pregnancy to its full term, to give birth and to raise children.

The judgment notes that a similar distinction is found in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 where 'mental illness' has been defined as any mental disorder other than mental retardation. Under Section 2(r) of the Act 'mental retardation' has been defined as 'a condition of arrested or incomplete development of mind of a person which is specially characterized by sub normality of intelligence'. Noting that 'mental retardation' has been similarly defined under the National Trust

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<sup>3</sup>28 august 2009.

for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, the judgment observed that persons in a condition of ‘mental retardation’ should be treated differently from those found to be ‘mentally ill’.

### **Section 3 in The Medical Termination of Pregnancy Act, 1971**

Mental ill is different from mental retardation.

### **Ms Z V The State Of Bihar And Others<sup>4</sup>**

In Ms Z v The State of Bihar and Others, decided by the Chief Justice of India-designate, the Supreme Court has considered the rape survivor’s pregnancy as a factor for the award of compensation under the Victims Compensation Scheme, as framed under Section 357-A of the Code of Criminal Procedure. This unwittingly introduces a new element in the award of compensation under the Scheme, although to be eligible for compensation, the victim need not be pregnant, as a result of rape.

Although Justice DipakMisra’s judgment is commendable for awarding the survivor Rs.10 lakhs as compensation for the negligence of the State under the public law remedy, it suffers from the same stereotypes which characterised most of the rape jurisprudence of the Supreme Court earlier.

Thus in Paragraph 53, Justice DipakMisra says as follows:

“One may have courage or cultivate courage to face a situation, but the shock of rape is bound to chain and enslave her with the trauma she has faced and cataclysm that she has to go through. Her condition cannot be reversed.” Readers may remember “Zinda lash” comment from the External Affairs Minister, SushmaSwaraj, when she was the Leader of the Opposition in the LokSabha in the aftermath of the Nirbhaya episode in 2012 which caused outrage in civil society.

Justice Dipak Misra continues: “The situation as is unredeemable. But a pregnant one, [emphasis ours] she has to be compensated so that she lives her life with dignity and the authorities of the State who were negligent would understand that truancy has no space in a situation of the present kind. What needed is promptitude.”

This is in line with Justice Dipak Misra’s other stereotypes which abound in Paragraph 2 wherein he narrates the consequences of the delay caused by the authorities of the hospital, to which she was taken, when the shelter home where she was residing came to know of her pregnancy:

“The delay in such a situation has the seed that can cause depression to a woman, who is already in despair. And this despair has the potentiality to drive one on the path of complete distress. In such a situation, the victim in a state of anguish may even think of surrendering to death or live with a traumatic experience which can be

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<sup>4</sup>Civil Appeal No.10463 of 2017

compared to have a life that has been fragmented at the cellular level. It is because the duty cast on the authorities under the MTP Act, 1971 is not dutifully performed, and the failure has ultimately given rise to a catastrophe; a prolonged torment. That is the sad narrative of the victim appellant.”

#### **IV. DOES THE PRESENCE OF DISABILITY MEAN THE ABSENCE OF RIGHTS?**

Farheena was just 10 and a half when she attained puberty. Doctors asked her mother Farida Rizwan to do a hysterectomy on Farheena. To stop her periods. Because Farheena is a special needs child — she has cerebral palsy.

“I was told the hysterectomy would help avoid hygiene issues during menstruation,” says Rizwan, who lived in Byndoor, a coastal town in Udupi, Karnataka, at the time. Other parents nearby had removed the uterus of their own young, **disabled** daughters. Rizwan refused. “I asked doctors about the side effects of such a surgery on someone so young. I never got an answer,” she says.<sup>5</sup>

The practice of forced hysterectomies became public in 1994, when they were found being conducted on mentally challenged women between the ages of 18 and 35 at Sassoon general hospital, Pune. A 1994 article in the British Medical Journal said “...health authorities claim consent was given by the women’s parents or other lawful guardians and that the operations were done to maintain the women’s hygiene during menstruation...” The same reason was cited in 2008 by the Maharashtra government seeking to conduct hysterectomies on 300-odd women in five government homes<sup>6</sup>.

#### **Protection of rights & dignity**

##### **Ground realities.**

##### **“Treated worse than animals”**

- Forced Institutionalization & abandonment in institutions.
- Denial of right to education.
- Sexual & physical abuses in institutions.
- Conditions in institutions.
- Denial of adequate & appropriate healthcare.
- Lack of redress mechanism.

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<sup>5</sup><http://www.thehindu.com>, august 4,2014.

<sup>6</sup> ibid

## V. CONCLUSION

In the conclusive note I want to conclude by mentioning that the condition of "women with disability" is very pathetic. The laws that are made for the disable persons and women are in the gazette of India are only in the written form they are not implemented and useful for most of the disable persons and women's as due to lack of awareness programs, they are not aware of their own rights.

Disable women are physically and mentally abused by their family, institutions, locality and everywhere. As even the disable women have also right to live with dignity but they are not getting that right. The society must have to change their attitudes towards disable persons as they are not dependent on anyone they also want a system of interdependence. Due to rape and acid attack the able or normal women become disable, it is the worst happening in our country.

## VI. SUGGESTIONS

- Comprehensive Rehabilitation programe
- Eshab shelter hones in the community
- Establishment of legal cells.
- Routine legal aid need assessment.
- Financial support to women leaving the destitutions.
- Research on women with disability should be conducted.
- Number of trained mental health proffesors.
- Participation of women with disability in decision/ policy making.
- Involuntary treatment.