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# Rights of Sexual and Reproductive Independence of Women with Disabilities

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## ABSTRACT

*Sexual and reproductive rights are certainly one of the most basic pedestals of human rights. They encompass the essential rights that every being deserves, such as the right to have the autonomy, independence, and complete authority over one's body and the consequent actions as well. These rights must also include the rights to make independent and erudite choices on matters revolving around sexual health, preferences, and rights over reproduction. Most of all these rights must be endowed with the protection and immunity from the stereotypes and stigmas, that the society has been continuously throwing upon those subjected to conflicts in these matters. Amongst the vast array of sections of the human race, who are concerned with the same, through our paper, we hope to bring the women with disabilities under the spotlight of our research. We have chosen the aforementioned section, as we believe that they are even more suppressed than the others due to their physical inequality in general as well from the dimensions of reproductive perspective, parenthood, financial, and economic and legal background. We would be therein, discussing key factors of relevance such as the sufferings that women face for being born a woman, moreover a woman with a disability, in the light of their rights to sexual and reproductive independence, being oppressed. We will also be examining the shift in the cycle of accountability concerning this issue from the perspectives of answerability, liability, and responsibility and the reasonableness and practicability of enforcement. And they say of the 'Convention on the Rights of Person with Disability (CRPD)' on the same with highlight to the optional protocol which in its current status quo has ordered, there be an investigation only in the event of the grave and systematic violations of its norms.*

## I. DISABILITY

In our world, disability can be seen in the lives of approximately 15% of the population which is equivalent to one billion, out of which most of them are located amidst the citizens of the developing countries, further specified in the Asia- Pacific region. Moreover, the percentile

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contrast between men and women with predominance in their disability, with 12% and 19.2%<sup>3</sup>

The major hindrance to having a detailed study on the intrinsic relation between gender and its effects on disabled individuals has been restricted to the limited sources and content material available on the subject. It's not just a certain specific group of people who have disabled individuals amongst them, moreover, disability is the aftermath of poverty.

## **II. THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)**

The basic rights of an individual were made available for the disabled ones for the very first time in the history of any binding conventions about the human rights, via the establishment and further enforcement on May 3<sup>rd</sup> of 2008 of The Convention on the Rights of Persons with Disabilities (CRPD). The basal goal for the launch of this convention was to make sure that every individual receives his fundamental freedoms and that they are protected, promoted, and maintained. And that these persons at no point in their lifetime are stripped of their dignity and integrity due to actions or reasons beyond their control. The principle of "Nothing about us without us" is a notion that the CRPD aimed to promote with full impact and therefore not neglecting the involvement of anyone with a disability.

The CRPD came up with a new approach to classify the individuals with a disability to address to their needs more effectively, this approach was mostly a social-centric model involving aspects of political and economic rights as well. Therein, the state parties were required by the CRPD to follow directions:

1. To protect persons with disabilities from violence, exploitation, and abuse (including the gender-based aspects of such violations) (CRPD Art. 16);
2. To ensure that persons with disabilities enjoy legal capacity on an equal basis with others (CRPD Art. 12);
3. To enjoy access to justice (CRPD Art. 13);
4. To ensure they are not subjected to arbitrary or unlawful interference with their privacy (CRPD Art. 22) and family (CRPD Art. 23),
5. To ensure they are not subjected to arbitrary or unlawful interference including in all matters relating to marriage, family, parenthood, and relationships; guarantee persons with disabilities, including children (CRPD Art. 7),
6. To ensure they are not subjected to arbitrary or unlawful interference involving their right to retain their fertility; take measures to ensure women and girls enjoy the full and

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<sup>3</sup> Laura Sminkey, World report on disability, World Health Organisation, Last viewed on 6/02/2019 at [https://www.who.int/disabilities/world\\_report/2011/en/](https://www.who.int/disabilities/world_report/2011/en/)

- equal enjoyment of their human rights (CRPD Art. 6);
7. To prevent people with disabilities from being subjected to torture, or cruel, inhuman or degrading treatment or punishment (CRPD Art. 15);
  8. To prohibit involuntary treatment and involuntary confinement (CRPD Arts. 12, 17 and 25);
  9. To implement disability-inclusive development practices (CRPD Art. 32),
  10. To ensure the right of people with disabilities to the highest attainable standard of health without discrimination, including in the area of sexual and reproductive health and population-based public health programs (CRPD Art. 25).
  11. To take measures to ensure women and girls with disabilities experience the full and equal enjoyment of all human rights and fundamental freedoms (CRPD Art. 6).<sup>4</sup>

Amongst the many parameters that the CRPD set up for their classification of subjects, gender was considered to be one of the primal factors. This was due to the need felt for ending the discriminations and stereotypes that women with disabilities had to face additional to their disability, due to the stereotypes towards their gender.

Per contra, the gender differences indeed endow different varied kinds of experiences to men and women subject to disability. Other factors such as biological, psychological, and cultural factors, contribute to its implied increase. Thus, in the core development goals of the UN, bridging the gap between the genders has been given a core development goal position. The UN System Task Team has also addressed this issue and has declared women empowerment and protection of their rights to equality in decision making concerning sexual and reproductive health matters.<sup>5</sup>

### **III. SEXUAL AND REPRODUCTIVE RIGHTS**

Women with disabilities are the most ill-treated group of people for reproductive rights. the CRPD found that under their multiple provisions the gender-based inequality and the discrimination of women with disabilities is a serious violation. Following are the areas where which this disabled woman is exploiting at the maximum based on human rights to check the violation:

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<sup>4</sup> Half-day of General Discussion on Women and Girls with Disabilities - 17 April 2013 (12:00-6:00 pm), United Nations Human Rights Office Of The Commissioner, Last viewed on 6/02/2019 <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGD17April2013.aspx>

<sup>5</sup> UN System Task Team on the Post 2015 UN Development Agenda (2012) Realizing the Future We Want for All: Report to the Secretary-General. Last accessed on 6/02/2019 at [http://www.un.org/en/development/desa/policy/untaskteam\\_undf/untt\\_report.pdf](http://www.un.org/en/development/desa/policy/untaskteam_undf/untt_report.pdf)

**A. FORCED AND COERCED STERILIZATION:**

Under legitimate medical care, and with the consent of other persons with their name, women with disabilities are forced to perform coerced sterilization. So that forced sterilization is considered as the gravest form of multiple human right violation and can also say as a form of social control and clear-cut evidence of the right to be free from torture. They are even deprived of seeking justice also. Many monitoring bodies such as the international human rights committee and the International Federation of Gynecology & Obstetrics (FIGO) all found that the forced sterilization is violating all provisions of their respective treaties. Even the later put forth many steps to end this practice along with that they are portraying the ethical and moral duties of doctors that allow the disabled women to give consent before undergoing a surgical operation. And it is stated in UN Special Rapporteur on Torture, 2013 that even if this forced sterilization accepted by national laws, still it violates the absolute prohibition of torture and cruelty. So, nevertheless, disabled women have the same rights as their non-disabled counterparts. If later are giving with the right of free and informed consent, disabled women also have to give this.<sup>6</sup>

**B. FORCED CONTRACEPTIVES:**

There is a misconception that disabled women are either asexual or hypersexual, they are denying from the basic right of right to safe contraceptives. The need of using contraceptives of disabled women is the same as that of women without disabilities, but, the way of using it might vary. Particularly in the case of women with intellectual disabilities are more likely to use surgical contraceptives and less likely to use an oral contraceptive. They are abandoned by deciding to select which contraceptive they want. The mode of torture, that is contraceptive usage by women with disabilities to suppress menstruation and sexual expression, population management, and pregnancy prevention.<sup>7</sup>

**C. GENDER-BASED VIOLENCE:**

Women with disabilities belong to other identity groups, also face a lot of violation. Because when gender identity comes to conflict with disabilities, unique violations will arise and that may lead to unique consequences. We have separate legal frameworks in dealing with gender human rights of women and with the disabled, the impact of the combined effect of both gender

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<sup>6</sup> The Core International Human Rights Instruments and their monitoring bodies, United Nations Human Rights Office Of The Commissioner, Last viewed on 13/02/2019 at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

<sup>7</sup> A/HRC/30/49, Méndez, Juan. E, Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee, 7 August 2015

and disability is not giving enough attention to violence so that the number is increasing at high rates. Home, community, private institutions are the various spheres where disabled women are experiencing the violation and the types of violations vary from sexual, physical, mental, psychological, financial aspects, trafficking, psychiatric, forced sterilization, and others. Women with disabilities are more likely to undergo domestic violations than women without disabilities, for a long time and with more serious injuries. They are not access to justice for these aspects as there is only limited awareness of strategies to prevent and manage it, unable to access legal protection, the legal practitioners and officials are not willing to take this as an issue and their testimonies are not considered as valid as a normal person by the court. Sexual inequality and gender-based violence will trigger the disability. Various human rights bodies recognized that the disabled women are the group in this world who experience the most vulnerable form of violence and the state have to see these issues seriously and address it as a global problem.

#### **D. DEPRIVATION OF PARENTAL RIGHTS:**

Women with disabilities are often disallowed to give the opportunity, to bear and raise the child. And this is the area they were experiencing the most exposed form of violation and affecting both the mental and physical capacity and they have been continued to be a dependent person rather than not allowing them to bear a child. These views are different and denying the right to reproductive autonomy for disabled women. Disabled parents as like normal parents are 10 times to have a child removed from their care as recent studies shows. If they gave birth to a child also, they are forced to undergo hysterectomies after one or two delivery, the child has been taken away from them, or the condition of having access to their children take off. Again, the fear arising is that the children of women with disabilities are facing a more vulnerable kind of violation than former sometimes. The saddest side is that many countries statutes on parental rights, custody of children, and divorce also include disability as a ground not on caring or parental skills. And it is because of this legal and societal prejudice, mothers with disabilities are facing such scrutiny by social service agencies. This fear may break down their care and relationship for children.

#### **E. LACK OF ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH & PROGRAMMES:**

The disability in women acted as a reason to make them isolated from the health services. The disability within the women made them excluded from all social activities which made the accessibility of the services in hardship. The supporting services in menstrual health, contraception methods, Sexual Health, Maternity, parenting methods, and menopause persisted

inaccessible. The stereotype attitude made a dent in the individual identity of women with disabilities. The limited availability of the means to reach out to the services for the disabled ones made the ends at worse. Even the Medical practitioner and the workers neglect the services they should provide to the disabled women. The paucity in reproductive health among practitioners is one of the major barriers to women with disabilities where this was born out in a myriad way. The courteousness, the responsiveness they give towards these women are pale compared to other individuals who approach them.<sup>8</sup>

#### **F. DEPRIVED ACCESS TO INFORMATION AND EDUCATION ON SEXUAL AND REPRODUCTIVE RIGHTS:**

For a woman with disabilities the knowledge of sexual and reproductive rights, reach to avail of these rights are very restricted. Women with disabilities even also showcase their desire for relationships are often banned due to limited opportunities. This is also restricted to a woman particularly intellectually disabled, and who are exploited the most. The heights of patriarchal and stereotypical attitudes prohibiting disabled women from starting a new life. The 'best interest' approach has, be that as it may, just served to propagate biased frames of mind against women with disabilities, and encourages the infringement of their sexual and regenerative rights. In all actuality, the 'best interest' approach has been appeared to have almost no to do with the youthful disabled women and more to do with the 'best interest' of others, especially, parental figures. These negative views about the reproductive capacity of women will affect the decision taking on their reproductive rights. When these negative thoughts combined with the authority of power, make the situation even worse.

This deprivation of awareness is an issue that needs immediate addressing, globally. Openness in this unique situation incorporates the right to seek, receive ideas and information concerning sexual and reproductive rights in an available format. This incorporates facts that reflect the experience of women with disabilities and the arrangement of information accessible, for example, Braille, audio, plain and basic language, the utilization of phone get to transfer of services, sign mediators, and websites. A further component of access includes having the capacity to comprehend and genuinely take an interest in the services and projects accessible, including education and information resources.<sup>9</sup>

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<sup>8</sup> Thierry, Increasing breast and cervical cancer screening among women with disabilities. *Journal of Women's Health & Gender-Based Medicine*, Vol. 9, No.1, pp.9-12(2000).

<sup>9</sup> Eastgate, G., van Driel, M. & Lennox, N. Intellectual disability, sexuality, and sexual abuse prevention: A study of family members and support workers. *Australian Family Physician* Vol. 41, No. 3, pp. 135-139 (2012).

**G.LACK OF ACCESS TO JUSTICE:**

The access to justice is the most basic civic political right of an individual irrespective of disabilities. But in the current scenario, women with disabilities are deprived of justice as they did not get proper support for fighting for justice. They are often treated as unreliable and not believed or not credibly witnessed. Despite their sufferings both physically and mentally, only a few cases are reported and prosecuted and many of them are inadequately investigated and remain unrevealed and result in the minimal sentence.

**IV. THE CYCLE OF ACCOUNTABILITY CONCERNING THE SEXUAL AND REPRODUCTIVE INDEPENDENCE OF WOMEN WITH DISABILITIES**

The bedrock of the entire layout of human rights here in the discussion can be highlighted as the factor of the onus of answerability. This concept of onus roots to majorly three essentials, which are of answerability, liability, and responsibility, and the reasonableness and practicability of enforcement. The system of enforceability of these human rights can be turned into different dimensions depending on the options of the consecutive set of actions chosen.

Therefore, the authorities, including both government officials as well as the employees of the private institution as well as the semi government organizations are hierarchically at the top when it comes to responsibility factor. This is due to these positions having a strict layout parameter of their assignments and work expectations and are examined based on these parameters. Hence if they err anywhere during the process of their fulfillment of the job descriptions, they are supposed to give substantial reasoning for the same. Here in context, these authorities have the liability to give their reasoning for them errs to the general public who are the ultimate sector to get affected by the actions of the authority. The scheme set up by human rights, prevents the authorities to use their powers with no restriction and thus keeps a check on it by making them answerable to the public.

The groundwork principles laid by the human rights set up, hence also abstain from the governing powers and the rule makers from framing any rules or protocols stemmed from prejudice and stereotype. Conclusively the Human Rights set up also mandates the states to take up developmental actions centering the protection and fulfillment of the women with disability, and to prevent the breach of the same under any circumstance, even in a state of emergency.<sup>10</sup>

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<sup>10</sup> Who Will Be Accountable, United Nations Center for Economic and Social Rights (CESR), Human Rights, and the Post-2015 Development Agenda, Office of the United Nations High Commissioner for Human Rights (2013).

The fundamental rights of any woman are especially deprived of the ones disabled on a larger ratio than the ones who healthy as a whole. The dark clouds of the society's prejudicial notions hover upon women as it is, nonetheless on women with disparities, further leading into a continued refutation to their independence on matters of their sexual rights. Worldwide this continues to be a huge failure and collapse of the various legislations set up by various nations of the globe. However, it's the cultural sentiments that are nothing but vestigial, are the substrata matters that pull down the progress to reforming the discriminatory practices towards the subjected women. Therefore, the need for immediate actions towards ensuring the protection of their elemental fundamental rights has become the need of the hour. Not just formulating regulations, but also the implementation of the same has to be made sure.

**Responsibility:** the main duty of Human rights law is to take care of citizens from infringement of fundamental freedoms and rights of people and to take action to get rid of that. They are very much obliged to make frameworks, protocols, including human rights treaties to look after its implementation. The principle of jus cogens elementally states that the right to be free from torture is one of the absolute and intangible human rights. A State can't legitimize its disagreement with the total prohibition of torture, under any conditions. International human rights not only prohibit torture (inhuman treatments) but also

- (a) if the state failed to adopt measures against the prohibition of torture.
- (b) maintaining the laws which came to conflict with prohibition.

Implies, the government must look through reproductive rights as it amounts to torture. In this context, States must act immediately to 'adopt effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture.

**Answerability:** human rights institutions states that the state and government are answerable to women with a disability whom their decision affects. The following principles can derive from this context - equal rights, accessibility, and access to information. So, the norms are expected to guide the state and government in implementing human rights. The inadequacy of free, active, informed participation can be seen in various fields of designing, implementation and interpretation, and evaluation of the decision. For this, women have to be represented, like for an organization constituting and leading by women can create and raise awareness, address violations deprivation of their sexual and reproductive rights. Financial and political support is quickly needed for such establishments and maintenance of such groups at international,

national, and regional levels.<sup>11</sup>

**Enforceability:** The duty of enforceability of the rights should not merely limit to formulating the afore discussed regulations and protocols, they should extend to ensuring that these women have a free voice to exercise and implement these rights endowed to them. And whenever they come across a hindrance in the same there should be immediate and potential redressal to all the barriers that arise. It's a very pivotal element in the success of the root intentions with which the framework was initially drafted. The individual state must ensure proper enforcement of the basic principles of the framework. Conclusively the target of women with disabilities to entirely benefit from the rights enshrined in international human rights treaties and standards is to be achieved and must be legally competent to attain justice, which they very much deserve. All these should rather be operational irrespective of one's ability and gender.

## V. CASE LAW

### *Suchita Srivastava V. Chandigarh Administration 2009 9 SCC 1*<sup>12</sup>

One of the residents of the institutions of the Nari Niketan, who is mentally differently-abled, was found pregnant. Just a month before this finding, she was aboding in the residence for the mentally differently-abled of the Ashreya organization. The statement of the police disclosed that the pregnancy was a result of a rape that the said resident was victim to during her stay in Nari Niketan in March of the year 2009. They also stated that as a follow-up procedure, all the inmates and members of both Ashreya and Nari Niketan were subjected to sample collection. The police concluded that this occurrence was executed with a partnership between members of Ashreya and Nari Niketan.

Following this, on behalf of the said resident, a PIL was initiated by the Chandigarh administration, requesting an abortion. Their petition was on the ground of mental retardedness of the subject. The medical board came up with a conjecture that this lady was not even competent to understand the true meaning of pregnancy and parenthood and would be unaware of the responsibility that comes with bearing the child and its future. They also anticipated that there would be complications in this course of pregnancy which would be outside her capacity of comprehension. Despite this, she was in the capacity of doing her daily routine chores. The medical board noted that the subject was aware of a baby coming shortly and she was rather excited about it. They were also of the opinion that if she remained in a healthy and positive

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<sup>11</sup> A/HRC/30/49, Méndez, Juan. E, Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee, 7 August 2015

<sup>12</sup> *Suchita Srivastava V. Chandigarh Administration 2009 9 SCC 1*

environment, she could give birth with no further complications. They suggested that any verdict to be passed regarding this abortion should be taken with a salubrious viewpoint and inclined towards not immediately dissolve the pregnancy. In contrast to the apprehension by the most, the High Court, in the light of the doctrine of 'parens patriae' decreed an urgent action of an abortion, neglecting the elaborate report by the medical board which specifically mentioned that termination would be risky at that point as the pregnancy has was slightly more than 3 months.

MTP Act lays out certain parameters for the subject candidate to undergo the procedure for abortion. In the context of this case, the facts or the candidate did not fulfill the parameters, especially the one that elucidates the termination of the unborn on the willingness and consent of the mother bearing the child. As here the resident of the Nari Niketan in question strongly opposed the termination of her pregnancy. High court without bothering to take the fundamental principle of the framework of MTP Act and UNCRPD that were of relevance. When the matter was forwarded to the apex court, the apex court contradicted the decree of the High Court on the merits of the notion that its basic fundamental rights of an individual need to be respected as well as ensured. Hence before moving the procedures of abortion is the will of the mother bearing the fetus.

Therefore, this decision of the apex court is regarding as one giant developmental leap towards ensuring that the disabled women are also free to exercise or claim their fundamental rights and independence in their procreative and sexual issues.

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