

VIOLENCE AGAINST WOMEN WITH DISABILITIES IN INDIA WITH SPECIAL REFERENCE TO RIGHTS OF PERSONS WITH DISABILITY ACT, 2016

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Abstract

India has a long history of discrimination, violence and atrocities against women and especially against women with disabilities because they were actually never counted in the mainstream women category or we can say these women's are forgotten women's in the society. On International level, we have UNCRPD, CEDAW which very specifically deals with the protection of women's and their rights. But the unfortunate part is that still the rate of violence against women's specifically women with disabilities are increasing day by day all across the globe. India has passed a law 'Rights of Persons with Disability Act' in 2016 for the protection of rights of persons with disabilities but the bitter truth is, it is insufficient to protect the victims of violence against women with disabilities. The darker part of these laws is the law enforcing agencies itself not trained to handle the victims of violence especially women with disabilities. The inaccessibility of our legal system and untrained law enforcing agencies and their attitude toward women with disabilities are nothing but the addition in their pain. The courts, police stations and whole legal systems need to be accessible and the human right violations against women with disabilities need to be protected according to part III of our constitution. The section 6, 7 and 8 of RPWD Act, are nothing but toothless provisions and need to be replaced with stricter laws. Article 39A of Constitution of India which gives us right to equal justice and free legal aid which needs to be implemented and the awareness should be provided to the victims of violence i.e., women with disabilities at police station level only. Government needs to be sensitized the society and families about disability and check the efficiency of Government or government aided rehabilitations centers for these sections of society and a proper scheme needs to be run for making them aware about their legal rights and needs to be facilitate them to achieve their basic rights like education, employment, health, etc.

Keywords: *Women with Disabilities, Violence, Discrimination*

Introduction

'Women and Girls with disabilities' in India are the most sensitive group in the domain of disability and shows a wide range of violence against these women. According to the 2011 census, in India out of its total population of the persons with disabilities, around 44% women are disabled which reflects a very huge number and also in the field of education, the 54% women with disabilities are illiterate in our country.

In our society, women with disabilities are the most vulnerable section and most easy and soft target for committing violence against these women due to their helplessness. The legal system of our country is not that effective or efficient in enforcing the penal provisions against the accused due to the lethargic approach of justice system.

The reported crime against women with disability is different in developed and developing countries due to certain factors such as the mindset of the society, the education level, the economic progress etc. In UK according to a family resources survey, 2018/19, 14.1 million people reported having a disability. And in USA according to the disability status census 2019 brief approximately 20% of Americans have one or more diagnosed disabilities. In UK we will find that the country has very particular laws for the protection of the women especially women with disabilities and similar thing

we can find in the laws of the country USA but if we compare the legislation between these developed countries with developing countries like India, then we will find that women with disabilities face higher risk of violence i. e. physical, mental, emotional and psycho-socio etc. Those women who are deaf and dumb if they face these types of violence in their life, they are not even able to call for the help or more vulnerable due to the lack of ability of hearing and sometimes even they do not know about the consequences of these violence due to the lack of access of the resources especially the women who has the disabilities such as intellectual and psychosocial disabilities. It is more difficult for these women with disabilities to escape from violent situations due to limited mobility.

On International level for the protection of the rights of the women we have UNCRPD i.e., United Nation Convention on the Rights of Person with Disability and the CEDAW i.e., Convention on the Elimination of All form of discrimination against women which specifically deals with the protection of the rights of the women in the society. Both laws internationally advocate for the gender equality and it binds on the signatory countries to implement it in true spirit. India is one of the signatory countries which

In India, in our ancient society, there was a culture for giving the respect of the women and also to protect the women but in the present society, due to globalization and the advancement in the society the crime against women has been increased not only in general but the crime against women with disabilities in particular and they are facing multiple types of discrimination from all the sections of the society.

In comparing the situation of the women in the rural area from the urban area, the number of cases of violence are more in the rural part than the urban part due to the unawareness of the legal rights, access to the criminal justice system and the reliefs i.e., compensation, restitution etc. from the state as well as national legal service authorities. The need is an empathetic approach toward the victims of violence and helps them to get access to justice according to the law. So, when we talk about the legal provisions in detail then we can find that the developed countries have very effective legal provisions such as the effective and practical rehabilitation or compensations schemes.

Need for an Empathetical Approach of Violence Against Women with Disabilities

According to the Human Right Watch Report¹ on access to justice for Women and Girls with Disabilities in India -

“The police should be sensitized to the emotional and the psychological needs of the victims and how to work with women and girls with disabilities. It is important to sensitize every officer-from top to bottom.” – Sanjay Guniyal, Inspector General of Police from Uttarakhand.

Access to justice is very difficult for women with disabilities due to the non-cooperation of the police and judicial system of the country and these women faces violence in their whole life in various forms such as physical, mental, emotional and economic as well and when a crime has been committed against these women especially the sexual offence, these women face the stigma or the stereotypical attitude of the society. So, these women can get justice from the legal system of our country.

According to the statement of a victims of sexual violence² -

The police asked me very nasty things like how it felt for me. I told them I was totally unconscious, so how would I know? The police said things like, ‘She’s mental, and why should I pay attention to her?’ (Susmita, 26, a woman with a psychosocial

disability from Kolkata, West Bangal, whom four male neighbors sedated and gang-raped in February 2014.)

The above statement given by the victim actually reflects the reality of the law enforcing agencies and their mindset towards the victims of women with disabilities and especially those victims who are deaf or dumb and are not able to communicate the incident of crime happened against them because due to their disability whether Intellectual or Psychological. The Police officers of our country should be trained and sensitive for dealing with these types of cases with women with disabilities.

A study carried out by an autonomous organization ‘**Bhartiya Stree Shakti**’ and funded by Ministry of Women and Child development, Government of India on the topic of “Tackling Violence Against Women: A Study of State Intervention Measures (A comparative study of impact of new laws, crime rate and reporting rate, change in awareness level)³”

According to this study, the violence against women is a violation of fundamental rights and freedom of the women which has been enshrined in the Charter of Fundamental Rights of the European Union (EU, 2000). Violence against women can be considered in any form whether in the four walls of the house, in the public domain and forms of violence can be such as physical, emotional, verbal, economic and mental and due to this fear of violence, they are lacking behind in their life.

Deep impact of the trauma remains in their minds even after post-violence corrective measures and rehabilitation. The district wise and area wise distribution of the respondent’s shows that the victims are across the area. Percentage wise difference is observed but the cases of violence are found across the geographical area and within the high and low prevalence area. Similarly, the socio demographic features of the respondents show that the cases of violence are found across the group of people. There is no difference based on religion, caste and education. Every age group of women have been facing violence in their life.

Further this study says that the police is the key and primary agency to stop and control it but the reality in Police Stations is: Constitutionally, every crime should be reported, and every woman who faces violence of any form should get justice. In India the rate of unreported sexual violence is “far higher”

¹ Human Right Watch Report on ‘Invisible Victims of Sexual Violence-Access to Justice for Women and Girls with disabilities in India’ 2018.

² Ibid

³ A study by ‘Bharati Stree Shakti’ and funded by Ministry of Women and Child development, Government of India on the topic of “Tackling Violence Against Women: A Study of State Intervention Measures (A comparative study of impact of new laws, crime rate and reporting rate, change in awareness level)”, 2017.

than statistics indicate. Before the new act and provisions, in many States, police responses to violence against women have been typified by inefficient service delivery and underreporting by both police and victims.

In the eyes of victims, and society in general, police officers are one of the main sources of help available to victims in cases of violence. Their attitude is important in facilitating a sense of safety and comfort to women seeking justice and support for protection. Indeed, police officers' attitudes and responses towards violence send a clear message to victims, offenders, and the wider community. This results in social disapproval and reprobation, or conversely social tolerance towards this kind of violence.

Legislative Frameworks

In 2007, India ratified the United Nations Convention on Right of Persons with Disabilities. Article 384 of this convention obligates the states to ensure access to justice to their disabled community. But the reports and data released by Human Rights Watch and other organizations which have been affiliated to the United Nations shows that India has been failing to provide equitable access in this regard.

The convention talks about protection against any discrimination on the basis of gender, race, caste, sex, colour and race, etc. and it recognize that women with disabilities are in great danger not only behind the closed doors but also outside the home. The convention emphasizes that there is a need to incorporate in the society a gender sensitive approach so that these persons with disabilities can enjoy their human rights and fundamental freedom given by the Constitution of India.

In addition to UNCRPD, the Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW) has been playing a tremendous role for the protection of women in the field of discrimination, violence, abuse or any other form and the General Recommendation No 19 explain the gender-based violence, not only impairs the fundamental freedom given under the Constitution on one hand but nullify the enjoyment of human rights on the International level and National level and part of discrimination which has been defined under Article 1 of CEDAW5 Convention.

The Constitution of India talks about the principle of gender equality, the principle of non-discrimination etc. but whether these principles are

actually followed in the normal day of life while analyze or assess the reason and in the justice given to the crime against women not only in general but the women with disabilities in particular.

In our Constitution, the preamble itself stated the idea of justice, equality and liberty etc. and Part III i.e., fundamental rights and Part IV i.e., fundamental duties itself reflect the protection of rights of an Individual on one hand as well the protection of rights of women and children on the other. But in our constitution also, the women with disabilities have not been found any place from protection of violence as such.

Article 14, 15, and 16 of the constitution talks about the principle of equality, Principle of non-discrimination and Protection from violence and empowers the State government under Part IV i.e. Directive Principle of State Policy to take all the essential safeguards for maintaining gender equality. There is a provision in our constitution as well as in our criminal justice system for providing legal aid to the accused as well as to the victim. Article 39 A of Constitution and Section 304 of Criminal Procedure Code promote the free legal services for the needy and also ensure the legal services has not been denied to the citizen of this country and ensure justice without any discrimination or disability.

The Government of India in 2016 came up with RPWD Act⁶, in the consonance of its ratification of the 2007 Convention, i.e., United Nation Convention on Rights of Persons with Disability. Before coming into the force of RPWD Act, there was PWD Act, 1995 in which there were only 7 categories of disabled person but after enactment of this act the new categories i.e. 21 has been added in the definition of 'Disabled'.

The victim of acid attack category was also included in the category and reservation has been increased from 3% to 4% but still this act does not specifically provide the protection from discrimination and violence against women with disabilities.

The various sections of RPWD Act such as Section 67, Section 78, and Section 89 partially talks about

⁶ Rights of Persons with Disabilities Act, 2016.

⁷ Rights of Persons with Disability Act, 2016

Section 6 (1) The appropriate government shall take measures to protect persons with disabilities from being subjected to torture, inhuman or degrading treatment.

⁸ Section 7 (1) The appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence, exploitation and to prevent the same, shall-

(a) take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents:

⁴ United Nations Convention on Rights of Persons with Disabilities (UNCRPD), 2007.

⁵ Para 6, General Recommendation No. 19 (11th Session, 1992) Violence Against Women.

the protection from cruelty and inhuman treatment, protection from abuse, violence and exploitation and protection and safety in armed conflict, again these are very general in nature and there is no penal provision for accused under the act and also these sections does not mention with caste discrimination, gender-based discrimination and abuse or violence etc.

Apart from this RPWD Act, there are other Legislation such as Indian Penal Code (BNS), Criminal Procedure Code (BNSS), and Protection of Children from Sexual Offences Act, (POCSO) Act which deals with protection of violence against women with disabilities. After the Delhi gang rape case which shook not only the conscience of the people of this country but also the members of the legislative and the judicial system of the country. After this heinous crime, the legislature felt the need for the new changes in the Criminal Law.

The Criminal law Amendment Act, 2013 has been enacted various provision in the Criminal law for dealing with the heinous offences against women such as section 326A, 326B (victims of acid attack), 375, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB and 376E (Punishment against rape), the punishment for rape has been increased, Section 354, 354A, 354B, 354C, 354D (assault or criminal force against women) of IPC(BNS). The various provisions in the Cr.P.C (BNSS) for the treatment of the victim and the recording of the statement of the victim also has been enacted after this amendment.

The Justice Verma Committee report has suggested these changes and this was the first committee which shows keen interest towards the rights and protection of the women with disabilities while changes in the recording procedure of the testimony of these women with disabilities.

Although these changes have been taken place, but whether the crime against women or women with disabilities has been curbed because during the year 2013-2019, the crime against women has been increased not only in the Capital of the country but in other state as well, so can only the enhancement of the punishment in the procedural law is the only solution for curb the crime against women or the change of mindset of the society can help a lot.

- (b) take steps for avoiding such incidents and prescribe the procedure for its reporting;
- (c) take steps to rescue, protect and rehabilitate victims of such incident and
- (d) create awareness and make available information among the public.

⁹ Section 8 (1) the persons with disabilities shall have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters.

Thus, when we talk about the Criminal Law, the whole criminal procedure reflects the accused centric approach, where how the accused can take benefits from the loopholes in the criminal law but now, slowly and gradually some reforms have been taken place where the judges talk about the rights of the victim as well and try to give a balanced judgment while not only focusing the rights of the accused on the one hand but rights of the victim on the other. So, with the advancement of the criminal justice system, the two types of rights of the victim have been enshrined in the system i.e., participatory right of the victim in the criminal justice proceedings, right to seek compensation etc.

Judgments and Case Study:

A woman age 35 to 40 years who was deaf and dumb was raped by three persons in the area Ram Nivas Bagh of Jaipur. All the three accused commit rape with the women while she was returning after attending a marriage. Soon after the incident the women narrated the story to the police officer but she was deaf and dumb, she has recorded her statement in the form of sign language.¹⁰

In *Suchita Srivastava v. Chandigarh Admn*¹¹, A rape was committed with a mentally retarded woman who was living in an organization and High Court passed the order for the termination of the pregnancy of the woman but the Supreme Court did not agree with the High Court order and set it aside and observed that best interest of the child is the paramount consideration. At this mature stage of pregnancy, abortion cannot take place and will harm the health of woman and child as well. The Supreme Court has relied on various declarations and Convention which India has ratified such as UN Declaration on the Rights of Mentally Retarded Persons, 1971 and UN Convention on the Rights of Persons with Disability. Every person has a right to take decision for oneself but in this case, the women was mentally retarded and cannot take the decision of abortion by itself. Thus, the court ordered the abortion while taking into consideration the situation and the circumstances. But the crime against women has been increasing day by day and especially with the women with disabilities and due to the sexual offence committed against these women and their helplessness, they become mothers of an unwanted child. Raising or bearing a child for these types of women can be a difficult task, although the central and state government has made some schemes or policies for the women but still the women with disabilities have not found any

¹⁰ Ramdhan Meena v. State of Rajasthan 1981 WLN 520

¹¹ Civil Appeal No. 5845/2009 (SC), Judgment dated 28 August, 2009.

place in those schemes. So, it is the responsibility of the government to take some reformative measures for these women so that they can bring up their child without any difficulty.

In *State of Rajasthan v. Darshan Singh*¹², According to Sec 119 of Indian Evidence Act, the person who is deaf and dumb can also give their testimony and their testimony will be considered as oral evidence under this section. According to Bentham “Witnesses are the eyes and ears of the Criminal Justice System.” and there is no particular number required for recording their testimony but reality is far away in the case of the reliability of the testimony of the deaf and dumb witness because their testimony generally refused by the court and taken into account with great suspicion. In this case also, the Court rejected and did not rely on the statement given by the wife whose husband has been found dead due to the fact that, she was deaf and dumb and only eyewitness of the crime, The father of the women was the interpreter in this case to interpret the testimony of the witness but the court take him into the category of an interested person.

In the significant judgment of *Patan Jamal Vali v. State of Andhra Pradesh*,¹³ Justice Dr. D.Y. Chandrachud discussed the vulnerabilities faced by women with disabilities. The accused was convicted for committing rape on a woman who was suffering from visual impairment and also belonged to Scheduled caste Community. He was also convicted and sentenced to life imprisonment under the said act. He approached before Supreme court and challenged it.

This was a criminal appeal by the accused who was convicted of committing rape on a woman with complete visual impairment and who belonged to the Scheduled Caste community. He was also convicted and sentenced to life imprisonment under the SC/ST prevention of atrocities act, 1989. The accused attempted to discredit the victim’s testimony on the ground that her disability prevented her from being an eyewitness. He challenged his conviction under the Atrocities Act on the ground that his crime was not on the basis of caste.

In the judgment, Justice Chandrachud undertook a detailed exposition on the concept of intersectionality, highlighting how the challenges and vulnerabilities faced by women were amplified when combined with those resulting from disability. He held that the victim was in a uniquely disadvantaged position, and while caste may not have been a factor, the accused took advantage of

her impairment and familiarity with her family to commit the crime.

Accordingly, the accused’s conviction under the Atrocities Act was overturned but his conviction under Section 376 of the Indian Penal Code (Rape) was upheld and his sentence remained unchanged. Justice Chandrachud also opined on the need for courts to be cognizant of the biases and stigma faced by persons with disability and to not perpetuate them by failing to give equal weight to their testimony.

So we have adopted various legislations and various provisions for giving justice to the victims of the crime but these types of cases reflects the perception and mindset of the police and judicial system of the country that they always reluctant to rely on the testimony of these women with disabilities but in the present scenario, with the transformative constitutionalism approach, the judicial system of our country has been trying to balance between the two perspective such as Individual Perspective and Societal Perspective and focused also has been changed from accused centric to victim centric not only in the compensation but in the victim participation through the Victim Impact Statement or we can say Victim Impact Report, that how the victim has been affected by the Crime. But still some reformation is required in the Criminal Justice System and in the procedure of the courtroom system for the disabled person on one hand and victims on the other, which is also necessary for the smooth functioning of the society.

In most of these cases, victims generally knew the culprit of the crime and especially the women with disabilities due to their helplessness, not able to record their testimony and sometimes the police are reluctant to rely on the testimony of these women. Even after the Criminal Law Amendment Act, 2013 various changes have been made in the recording procedure of testimony of women with disabilities but still there is a wide gap in the implementation procedure because it depends on the attitude and the mindset of the judges while recording the testimony of these women who are the helpless victims of crime. Sometimes due to the lack of evidence, the accused acquit in the high court while on appeal.

Conclusion

Violence against women in India has a long history especially against the women with disability because they were in reality never counted in the mainstream women category or we can say these women’s are forgotten women’s in the society. Although we have so many legal provisions on National as well as International Level, the darker

¹² AIR (2012) 5 SCC 789.

¹³ (2021) 7 SCC 117

part of these laws is the law enforcing agencies itself not trained to handle the victims of violence especially women with disabilities. The inaccessibility of our legal system and untrained law enforcing agencies and their attitude toward women with disabilities are nothing but the addition in their pain.

In the absence of any role played by the women with disabilities and the stereotypical remarks against these women contribute to their vulnerable position in the society and also lead to the various human rights violation of these women such as non-reporting of the crime, non-admissibility of their statements in the court of law and equal access of the justice system to them. The major hindrance which these women face is the non-awareness of their legal as well as constitutional rights.

The courts, police stations and whole legal systems need to be accessible and the human right violations against women with disabilities need to be protected according to part III of our constitution. Over the past two decades, many States have adopted or revised legislation on violence against women especially in India there were so many amendments has been done in IPC, in fact still one committee is established by MHA

for Criminal Reforms in Laws to keeping in mind the women safety. But unfortunately, there is no special provision for the safety of women with disabilities. The disabled women are facing multilevel discrimination in our families, societies.

Government needs to be sensitized the society and families about disability and check the efficiency of Government or government aided rehabilitations centers for these sections of society and a proper scheme needs to be run for making them aware about their legal rights and needs to be facilitate them achieve their basic things like education, employment, health, etc.

The need is proper implementation of these laws and awareness of these laws among the common people. There is a need of hour for handling the crimes against women in the society and the strict punishment cannot be the only solution, there should be proper implementation from the registering of the FIR or Complaint till the trial of the accused and especially the recording of the statement given by the victims who are mentally challenged and cannot record their statement without the help of interpreter. There should be proper counseling and proper implementation of these laws required.