



Neglected & Forgotten?: Women with Disabilities in Indian Criminal Justice System

***¹Mr. Anuj Kumar Tiwari, (Author)**

***²Dr. A. Marisport (Co-author)**

Disability is not something that an individual overcomes. -Haben Girma

The group of disabled women is not uniform. They are the most underprivileged and at risk group in society. They have a wide range of difficulties, including mental, emotional, intellectual, and sensory disorders. The diversity of women and girls with disabilities includes not only their disabilities but also their many and intertwining identities, such as belonging to a particular social class or having a particular ethnic, religious, or racial background; being refugees, migrants, or internally displaced people; being LGBTQI+; having HIV or being infected by it; being young or old; or being widowed.³ For a very long period, they have been arbitrarily barred from all decision-making spaces in our communities. It conceals the underlying reasons why people are subjected to gender and disability discrimination and permits the perpetuation of negative stereotypes, which results in the violation of human rights. In addition to experiencing violence, they also struggle with a variety of other issues in their day-to-day lives, such as losing access to the resources they need to communicate, move about freely, or live independently.

According to estimates, more than one billion individuals worldwide have a disability. Compared to 12% for men, the average prevalence rate among women aged 18 and older is 19.2%, or around 1 in 5 of them.⁴

According to the 2011 Census of India, 26.8 million persons, or 2.21 percent of the population, are disabled.⁵ According to data from the World Health Organisation and the World Bank, 12 percent of men and 19 percent of women worldwide live with a handicap.⁶ Discordant definitions of impairment, a lack of knowledge, and stigma—especially for women and girls—which leads

¹ B.Sc. LLB, (Gujarat National Law University Gandhinagar), LL.M (National Law University Delhi), Ph.D Scholar (GNLU).

² Assistant Professor of Law at Gujarat National Law University Gandhinagar and head of Centre for Disability Studies at GNLU.

³ A Strategy by the UN Women titled “The Empowerment of Women and Girls with Disabilities – Towards Full and Effective Participation and Gender Equality”, New York (2018).

⁴ A World Report on Disability by World Health Organization (WHO) (2011).

⁵ Office of the Registrar General & Census Commissioner, India, “Presentation on Disability, Census of India 2011: Data on Disability”.

⁶ World Health Organization and World Bank, “World Report on Disability 2011,”

to underreporting—can be blamed for the difference between Indian and worldwide statistics.⁷ A major issue facing the government is access to justice. Unfortunately, the current legal framework does not reflect the spirit of the constitution for women with disabilities or for people with disabilities generally. The Indian Constitution guaranteed equality under Article 14 for all, and the government has demonstrated its commitment to it for Persons with disabilities as well. The fact that the crime or violence done against this group has no space in NCRB or any other agency has any such data, which is once again one of the main requests of this group since a long time, is the finest illustration of how seriously the government is taking things.

Senior government officials are aware that violence against women and girls with disabilities is a serious problem, despite the lack of national disaggregated data on the subject.⁸ Lalitha Kumaramangalam, the former head of the National Commission for Women, stated in December 2015 that rape incidences involving handicapped women are significantly greater than those involving other women, regardless of the kind of impairment. This statement was based on her talks with disability advocates and specialists.⁹

Only 20% of women with disabilities were employed full-time in the EU in 2021, compared to 29% of men with disabilities and 48% of women without disabilities, according to statistics from the European Institute on Gender Equality. Similar to males with impairments and women without disabilities, women with disabilities had lower salaries, less education, and more unmet health needs.¹⁰ Again, when we compare this ratio to India, we see that we are much behind. Despite a number of important rulings and decisions, we are still having trouble providing this specific population with enough infrastructure and a supportive atmosphere.

Women with disabilities, who make up an estimated one-fifth of all women in the globe, went ignored for a very long time due to both their gender and their disability. The fact that they are invisible demonstrates how much worse off they are than both men and women without impairments. Compared to non-disabled women, handicapped women and girls experience more violence and prejudice. Girls and women with disabilities frequently suffer maltreatment at the hands of their families, communities, and the government. Since the majority of the witnesses in their case are family members or people they know and who choose to remain silent and not report the case, there is no conclusive data. Gross violations of their sexual and reproductive rights occur. They are subjected to coerced abortion, forced sterilisation, and denial of knowledge on contraceptives and reproductive health. When disabled women seek for reproductive health care, their clinicians frequently abuse them. Additionally, they frequently lose custody of their children and have restrictions placed on their ability to get married and start a family. Adopting children is essentially difficult for

⁷ An article by Sachin P. Mampatta, titled “India’s missing disabled population,” Livemint (2015).

⁸ Maharashtra Police, Presentation on “Measures Taken to Prevent Crime Against Women,” on file with Human Rights Watch.

⁹ An article by Lalitha Kumaramangalam titled “One of the biggest challenges for disabled women is access,” Livemint.

¹⁰ A report by Gender Equality Index by European Institute for Gender Equality, 2022.

handicapped women. Additionally, they frequently experience abuse from both family members and personal helpers. Women with disabilities do not have access to the workforce, and there are insufficient legal protections against harassment based on a person's handicap. Due to the stigma and victim-blaming they experience when reporting sexual violence, as well as the fact that few people in India are aware of their legal rights, they face numerous obstacles. Additionally, when civil society and the government take initiatives to inform women and girls about their legal rights, this information may not be accessible to people with disabilities because there is a lack of information on laws and procedures in accessible formats. Due to incorrect or inadequate police training, individuals have trouble interacting with the police and are dealt with with the utmost insensitivity. In reality, because they lack the required training and the Court personnel and hospital medical professionals are similarly unskilled, they handle the victims of this organisation with extreme insensitivity. Due to this unjust and discriminatory treatment, the handicapped victims constantly feel insecure and disregarded. As a result, they feel pressure from their families and society to stay quiet about any crimes and violence that may occur inside the home.

Only 25 percent of women worldwide who have impairments are employed, according to the UN. They are twice as unlikely as handicapped males to get employment. In 1994–1995, handicapped males in the US made 55% more money than crippled women.¹¹ Women and girls with disabilities have lower literacy rates as a result of discrimination based on gender and disability. According to UNESCO, the global literacy rate for people with disabilities is 3%, and it is 1% for impaired women and girls. In comparison to the global average, India's literacy rate is lower. The rise in violence towards WWDs (Women with Disabilities) might possibly be attributed to this. The cornerstone of all society transformation is education. One of the main factors is the inadequate infrastructure in elementary schools, colleges, and universities. According to Article 21-A of the Indian Constitution, education is the most significant basic right.

The extensive marginalisation and environmental obstacles that women and girls with disabilities face result in: lower economic and social status; an increased risk of abuse, including sexual abuse; harmful gender-based discriminatory practises; and obstacles to accessing justice, health care information and services, education, and civic and political participation.

Their inability to participate equally with others is a result of their impairment. The protection of their human rights has not received the required attention from any organisations or policymakers. Even the rules governing gender equality omit to address the issues related to impairments.

Disabled Survivors Unite, a UK disability rights NGO, noted that women with disabilities were more than twice as likely to face violence and abuse in comparison to women without disabilities

¹¹ <https://www.hrw.org/legacy/women/disabled.html>

in the UK during the recent UK Parliament inquiry on violence against women and girls.¹² In addition to the risk of sexual assault and abuse they encounter on a daily basis, women with disabilities also experience discrimination from the police and other help agencies when they report acts of violence against them.

For instance, a woman can be "not a reliable witness" due to her infirmities, such as autism or PTSD. As a result of her inability to "identify her accused," a blind woman's account of multiple sexual assaults was disregarded. The heightened danger of sexual assault is the main factor preventing women and girls with disabilities from enjoying human rights on an equal footing with others. The study released by Human Right Watch, in which case-by-case accounts of numerous female victims have been published following on-the-ground reporting, illustrates the worst WWD circumstances in rural India, where a lack of knowledge and illiteracy prevent victims and families from reporting incidents.

Guidelines and Protocols for Medico-Legal Care for Victims/Survivors of Sexual Violence, published in 2014 by India's Ministry of Health and Family Welfare, include requirements for the medical examination of women and girls with disabilities, such as providing accommodations like a special educator to take consent and medical histories. Many medical practitioners might be contributing to the trauma of sexual assault by failing to appropriately explain medical tests and procedures and make sure that women and girls with disabilities feel at ease with the process.¹³

According to Lalitha Kumaramangalam, a former head of the National Commission for Women, access to services—not only physically, but generally—remains one of the largest obstacles for women with disabilities.¹⁴

The UN Committee on the Rights of Persons with Disabilities stated: "In situations of armed conflict, natural disasters, and humanitarian emergencies, women with disabilities are at high risk of sexual abuse and are less likely to have access to rehabilitation services or access to justice."

To ensure a more structural approach to strengthen the inclusion of the rights of women and girls with disabilities in UN Women's efforts to achieve gender equality, the empowerment of all women and girls, and the realisation of their rights, a strategy called Empowerment of Women and Girls with Disabilities - Towards Full and Effective Participation and Gender Equality was developed.¹⁵

¹² A comment by Council of Europe titled "Addressing the invisibility of women and girls with disabilities", STRASBOURG (2022).

¹³ An Report by Abhishek Kumar Mehan titled "Invisible victims of Sexual Violence", Human Rights Watch (2018).

¹⁴ Ibid.

¹⁵ A Strategy by the UN Women titled "The Empowerment of Women and Girls with Disabilities – Towards Full and Effective Participation and Gender Equality", New York (2018).

The Persons with Disabilities Act of 1995 was superseded with the Rights of Persons with Disabilities Act of 2016 in India. The CRPD, which India adopted in 2007, is more closely aligned with the definition of disability under Indian law according to the 2016 act.

The rights of women with disabilities have been recognised by the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which has been ratified by all Council of Europe member states with the exception of Liechtenstein.

The freedom to make one's own decisions, independence of persons, non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance of persons with disabilities as part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women, respect for inherent dignity.¹⁶

Article 6 - Women with disabilities¹⁷ set out the obligation of States Parties that:

1. Recognising that women and girls with disabilities face numerous forms of discrimination, States Parties must act to ensure that they can fully and equally enjoy all fundamental freedoms and human rights.
2. In order to ensure that women can exercise and enjoy the human rights and fundamental freedoms outlined in the current Convention, States Parties should take all necessary steps to ensure their full development, progress, and empowerment.

Children with disabilities have rights recognised under Article 23 of the CRC. In order to live complete and independent lives, it specifies that children who experience any kind of handicap have a right to particular care and assistance.¹⁸

The Beijing Declaration and Platform for Action outlines concrete steps to overcome the numerous obstacles to women's empowerment and progress and to guarantee them in a variety of fields.

The Addis Ababa Action Agenda calls on governments and corporations to cooperate with local, regional, and international organisations in order to offer social protection, technology access, and employment opportunities for people with disabilities. This Agenda also acknowledges that in order to achieve gender equality, investing in women's empowerment and the realisation of their human rights is crucial to attaining inclusive and equitable economic growth and sustainable development.

Given the various forms of discrimination that women and girls with disabilities experience, the New Urban Agenda applies to all of them. The Agenda pledges to eliminate all types of

¹⁶ Article 3 of the Convention on the Rights of Persons with Disabilities.

¹⁷ Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 by Sixty-first session of the General Assembly by resolution A/RES/61/106.

¹⁸ UNICEF Fact Sheet: A summary of the rights under the Convention on the Rights of the Child.

discrimination, grant people with disabilities equitable access to technology, jobs, and public services, including transportation infrastructure, and assure their involvement in urban planning decision-making.

The 2030 Agenda for Sustainable Development acknowledges the need of structurally strengthening gender-based perspectives for achieving all of the goals and targets of the Sustainable Development Agenda as well as for the empowerment of people with disabilities. The 2030 Agenda includes people with disabilities in the SDGs related to poverty, hunger, education, washing, sanitation, and hygiene, economic growth and employment, inequality, accessibility of human settlements, climate change, data, monitoring, and accountability. It also has a standalone goal on gender equality and the empowerment of all women and girls.¹⁹ The empowerment of women and girls with disabilities will be aided by the successful implementation of the 2030 Agenda.

The European Union established the European Disability Strategy 2010-2020 at the regional level, giving eight areas of empowerment for people with disabilities, such as participation and equality, top priority.

These organisations must be given top priority treatment and increase their efforts to help women with disabilities. Recognising the unrecognised power and fortitude of women and girls with disabilities is a necessary first step in this direction so that they can take the initiative and chart their own course.

The central and state governments of India must effectively carry out laws and policies that safeguard the rights of women and girls who are disabled. It is crucial to have a positive interaction with police in order to foster trust in the criminal justice system. As such, it is necessary to ensure that police, medical officers, judicial officers, etc. receive the proper training on how to deal with the victims of sexual violence, particularly the women and girls who are disabled. Police are often unsympathetic to women, and this is especially true of how they treat women who have impairments.

There must be "special educators" in our criminal justice system who can handle them correctly and offer help. Women police officers must be accessible at police stations so that people may file complaints. Compensation for victims of sexual assault, including women and girls with disabilities, must be provided. The amount of compensation provided should cover the victims with disabilities' immediate requirements. Inform women and girls with disabilities that they have a legal right to receive free legal assistance. Since they already deal with a lot in their daily lives, they require a lot of attention and must be treated delicately.

¹⁹ A Report of the Secretary General on the Situation of women and girls with disabilities and the Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, A/72/227 presented at United Nations, General Assembly.

Conclusion

India has a rich culture of brotherhood. We believe in helping each other, which is again in the spirit of our constitution too. The current position of the disability group is worrying to society at large. The current legal framework is inadequate to tackle violence, poorness, illiteracy, discrimination, inequality, etc., against this group. The need of the hour is that Government need to pay special attention to drafting inclusive legal mechanism, looking into the practicality of it and its effective implementation on the ground. There are many landmark judgments through which the Judiciary has directed and suggested the government to work intensively and effectively for the protection of persons with disabilities and WwD.

Women who are disabled are a very soft target for committing crimes or violence. In many cases, it is found that mostly the accused are from family only or caregiver only. Rights of Persons with Disability Act, Section 6 & 7, which talks about the protection of persons with disabilities. These sections are very general in nature, and there are no specific or stricter laws for their protection. NCRB or any other government agency does not have any data which can record the crimes/violence committed against Women with disabilities or persons with disabilities.

So, this neglect and forgottenness of the legislation and government need to be rectified as soon as possible; just by bringing new acts or laws, it can not be improved. On the other hand we need to sensitize the society at large regarding their role & responsibilities toward these people. The vision of New India and its goals can not be achieved by ignoring this section of the society, and if proper support and training can be provided, then this section can play a vital role in making New India especially Women with Disabilities.