

Violation of Human Rights of Women suffering from Intellectual Disabilities - A Criminal Justice Issue in India

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*For too long human differences have counted as a ground for exclusion – whether direct or subtle. For too long the human difference of disability was looked on as something that ruins rather than complicates human existence. For too long our societies reacted either out of pity or revulsion to people with disabilities.... This has to stop.*²

Donal Barrington³

Introduction

Disability is part of the human condition. It is the result of negative interactions that take place between a person with an impairment and his or her social behaviour.⁴ In simple words, disability can be defined as the loss or limitation of opportunities to take part in the society on an equal level with the others due to the social and environmental barriers.⁵ People with disability are often considered to be weak, worthless and in some cases sub-human by their societies and because of this attitude they face a heightened risk of violence whether it is physical, mental or sexual in nature. Even in the context of religion, one can find evidence of the low regard that the various religions have always had for the disabled.⁶ For Example, Hindu Law discriminated against the disabled on two grounds:

1. According to *Baudhayana* they are not capable of transacting legal business.⁷

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² Speech by Donal Barrington, Former President, Human Rights Commission at the Conference on *Towards a United Nations Convention on Human Rights of Persons with Disabilities*, at the Royal Hospital Kilmainham on 26 February 2002, UNITED NATIONS ENABLE (Sep. 10, 2017, 12:30 PM), <https://www.un.org/esa/socdev/enable/rights/contribhr41.htm>.

³ *Id.*

⁴ Defining Impairment and Disability, CENTRE FOR DISABILITY STUDIES (Sep. 10, 2017, 12:34 PM), <http://pf7d7vi404s1dxh27mla5569.wpengine.netdna-cdn.com/files/library/Northern-Officers-Group-defining-impairment-and-disability.pdf>.

⁵ *Id.*

⁶ Michael Moore, *Religious Attitudes towards the Disabled*, THE SECULAR WEB (Sep. 17, 2017, 08:12 AM), https://infidels.org/library/modern/michael_moore/disabled.html.

⁷ 2 P.V. KANE, HISTORY OF DHARAMSHASTRA 297-298 (Government Oriental Press, 1958).

2. There was discrimination against the disabled because they were unable to perform the religious ceremonies. However, this discrimination was not on religious grounds as *shudras* who were not required to perform the Vedic rites were also excluded from inheritance on the grounds of disability.⁸

Middle Eastern cultures also regard disability as a punishment from the heaven, emanating from the spirits and caused by an evil eye.⁹ Although the full range of disabilities is recognised across cultures, its prevalence and definition is bound by socio-economic and political considerations, and the extent to which the people with disabilities are valued or devalued varies from one culture to another.¹⁰ Disability is not just a health problem, rather it is a complex phenomenon which covers impairments, activity limitations and participation restrictions. For a better clarity of the term 'disability', it would be imperative that we tend to focus on the various international and national instruments which talk about the rights of the disabled persons.

Para 5 of the Preamble to the Convention on the Rights of Persons with Disabilities, 2006¹¹ not only acknowledges that disability is an "evolving concept", but also stresses that:

"Disability results from the interaction between the persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in the society on an equal basis with the others."¹²

⁸ RAMESH CHANDRA DUTT, A HISTORY OF CIVILIZATION IN ANCIENT INDIA 59 (Vistar Publishers, Delhi, 1972).

⁹ DINESH BHUGRA (ed.) & KAMALDEEP BHUI (ed.), TEXTBOOK OF CULTURAL PSYCHIATRY 462 (Cambridge University Press, 2007)

¹⁰ *Id.*

¹¹ Convention on the Rights of Persons with Disabilities, 2006 (A/RES/61/106). The Convention was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007, UNITED NATIONS ORGANIZATION (Sep. 12, 2017, 11:21 AM), <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

¹² *Id.*

Therefore, to define disability as an interaction means that disability is not an attribute of the person.¹³ Section 2(s) of the Persons with Disabilities Act, 2016¹⁴ also provides that a person with disability means a person with a long term physical, mental, intellectual or sensory impairment which in interaction with barriers, hinders his full and effective participation in the society equally with the others. The United Nations Sustainable Development Goals (SDG's)¹⁵ under Goal 3 strives to ensure healthy lives and also to promote the wellbeing for all at all ages. Goal 4 also strives to build and upgrade education facilities which are child, disability and gender sensitive and provide a safe, non-violent, inclusive and effective learning environments for all. However, the United Nations Report¹⁶ of the Secretary General stated that in 2016 only 28% of the people with severe disabilities collected the disability benefits.

In the ninth session of the Conference¹⁷ of State Parties to the Convention on the Rights of Persons with Disabilities, 2016 held in New York, the former President of General Assembly Mr. Mogens Lykkesoft recognised that *the rights and perspectives of persons with disabilities were increasingly being integrated into international development frameworks*. In his closing remarks also, he mentioned that there is an imperative need to mainstream disability in the implementation of the 2030 agenda and in that

¹³ World Report on Disability, *Understanding Disability*, WORLD HEALTH ORGANIZATION (Sep. 12, 2017, 11:34 AM), http://www.who.int/disabilities/world_report/2011/report.pdf.

¹⁴ The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016 (India).

¹⁵ United Nations Sustainable Development Goals, officially known as Transforming our world: the 2030 Agenda for Sustainable Development, is a set of 17 Global Goals which were built on the Principles agreed upon under Resolution A/RES/66/288, popularly known as The Future We Want, in 2015. They came into force on January, 2016.

¹⁶ United Nations Secretary General Report on Progress towards the Sustainable Development Goals (2017), UNITED NATIONS STATISTICS DIVISION (Sep. 13, 2017, 09:21 AM), <https://unstats.un.org/sdgs/files/report/2017/TheSustainableDevelopmentGoalsReport2017.pdf>.

¹⁷ Report of the ninth session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, 2006, UNITED NATIONS (Sep. 13, 2017, 09:50 AM), http://www.un.org/disabilities/documents/COP/9/cosp9_report_e.pdf.

regard, the need to strengthen co-ordination to break down silos and actively engage persons with disabilities in the decision making process.¹⁸

Thus, disability is a development issue and it will be hard to improve the lives of the most disadvantaged people in the world without addressing the specific needs of the persons with disabilities. There are a number of disabilities which have been recognised under the legal frameworks including blindness, low-vision, leprosy-cured persons, hearing impairment, speech and language disability, autism, etc. Intellectual Disability has also now been included under the list of disabilities. From attempts by the Eugenicists and the Nazi regime to eradicate the people suffering from intellectual disabilities alongside other groups deemed “undesirable”, to taunts that use derogatory language associated with the intellectual impairment, to being shunned because their disabilities have been ostracized throughout the history and across cultures and are one of the most marginalised and excluded groups around the world.¹⁹

Despite the various legislations, there is a severe shortage of accessible and appropriate government services for women with intellectual disabilities. Women with Intellectual Disabilities are easy targets since they are often financially and emotionally dependent on carers in a private space and thus, they are at a higher risk of violence. Lack of adaptive functioning skills such as reasoning, inter-personal competence and impaired understanding are some of the issues identified as contributing to the ongoing victimization, which may exacerbate a sense of entrapment. The purpose of this paper is to focus on the meaning of intellectual disability and the violence attributed towards the women who are suffering from the same. Apart from this, the international and the national legal frameworks shall also be discussed throwing light on the violation of the human rights of such women.

¹⁸ *Id.*

¹⁹ Intellectual Disability: Raising Awareness and Combating Stigma- A Global Review, UNIVERSITY COLLEGE LONDON (UCL) (Sep. 13, 10:43 AM), <https://www.ucl.ac.uk/ciddr/documents/ExecSummary>.

Intellectual Disability- Meaning

The nature and definition of intellectual deficits have been debated since the beginnings of the classification of mental disorders.²⁰ Esquirol referred to intellectual deficits overall as conditions of incomplete mental development based on known or unknown biological or environmental issues.²¹ The Convention on the Rights of the Persons with Disabilities does not define the term disability per se, but rather talks about it as an outcome of the interaction between an impairment and the environment. Such a definition highlights the heterogeneity of experiences, life chances, choices and preferences of adults and children with disabilities shaped by a range of socio-economic, cultural and other factors rather than focusing on a condition. Therefore, in line with the Convention, the World Report on Disability²² defines the term intellectual impairment as:

“A state of arrested or incomplete development of mind which means that the person can have difficulties understanding, learning and remembering new things and in applying that learning to new conditions. Also known as intellectual disabilities, learning disabilities and formerly as mental retardation or mental handicap.”²³

The American Psychiatric Association²⁴ also defines Intellectual Disability as something which involves general mental abilities that affect the functioning in two areas:

1. Intellectual Functioning (such as learning, problem solving, judgment),
2. Adaptive Functioning (activities of daily life such as communication and independent living).

²⁰ James C. Harris & Stephen Greenspan, *Definition and Nature of Intellectual Disability*, SPRINGER (Sep. 15, 2016 21:45 PM), file:///C:/Users/jai%20mata%20di/Downloads/9783319265810-c1%20(1).pdf.

²¹ *Id.*

²² *Supra* note 12.

²³ *Id.*

²⁴ Defining Intellectual Disability, American Psychiatric Association (Sep. 9, 2017, 22:13 PM), <http://www.apa.org/pi/disability/resources/publications/newsletter/2016/09/intellectual-disability.aspx>.

The Diagnostic and Statistical Manual²⁵ defines Intellectual Disability as:

1. Significant impairment of intellectual (cognitive) functioning, indicated by a full scale IQ below 70,
2. Significant impairment of adaptive (social) functioning that affects how a person copes with the everyday tasks in the following three areas:
 - i. The conceptual domain, which includes the skills in language, reading, writing, maths, reasoning, knowledge and memory.
 - ii. The social domain, which included empathy, social judgment, interpersonal communication skills, the ability to make and retain friendships and similar capacities.
 - iii. The practical domain which centres on self-management in areas such as personal care, job responsibilities, money management, recreation and organizing school and work tasks.

Article 1 of the Convention on the Rights of Persons with Disabilities also says that the persons with disabilities include 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.

The Persons with the Disabilities Act, 2016 under Section 2 of its Schedule clearly mentions that intellectual disability, is a condition which is characterised by significant limitation both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills, including specific learning disabilities²⁶ and autism spectrum disorder.²⁷ Specific Learning Disability means the condition where there is a deficit in processing language, or difficulty to comprehend, speak, read, write, spell or do mathematical calculations and also includes perceptual disabilities, while Autism

²⁵ American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. Arlington: American Psychiatric Association, 2013).

²⁶ Section 2(a) of the Schedule of the Persons with Disabilities Act, 2016.

²⁷ Section 2(b) of the Schedule of the Persons with Disabilities Act, 2016.

Spectrum Disorder is a neuro-developmental condition that appears in the first three years of the life of a person. It affects a person's ability to communicate, understand relationships and relate to others.

Therefore, in my opinion, intellectual disability may be defined as a significantly reduced ability to understand new or complex information, to learn new skills and a reduced ability to cope independently i.e. impaired social functioning. A person's mental capacity, the ability to make decisions can vary depending on the environmental or social factors; however, the legal capacity is "a universal attribute inherent in all person by virtue of their humanity" and can therefore not be stripped of it."²⁸

Violence Against Women with Intellectual Disabilities- A Human Rights Perspective

Violence in all its facets remains a serious area of concern for women with disabilities, both as an individual experience and a structural reality that systematically oppresses them in all areas of life.²⁹ The violence occurs throughout the life cycle from pre-birth, infancy, childhood, adolescence to senescence.³⁰ While the most identified damages of violence against women are physical injuries, the unseen damages penetrate deeper.³¹ The 1993 Declaration on the Elimination of Violence against Women³² defined violence against women as any act of gender-based violence that results in or is likely to result in physical, sexual or psychological

²⁸ United Nations Committee on Rights of Persons with Disabilities, *General Comment on Article 12: Equal Recognition before the Law* (CRPD/C/4/2 (2014)).

²⁹ Women with Disabilities (WwD) India Network, Special Chapter 1a - Women with Disabilities, WOMEN ENABLED ORGANIZATION (Sep. 20, 2017, 10:09 AM), <https://womenenabled.org/pdfs/mapping/Women%20with%20Disabilities%20in%20India.pdf>.

³⁰ Indira Sharma, *Violence against Women* 57 Indian Jour. Of Psychiatry 131, 132 (2015).

³¹ C. GARCIA-MORENO (ed), & A. RIECHER-ROSSLER (ed.), *VIOLENCE AGAINST WOMEN AND MENTAL HEALTH* 3 (Karger Medical and Scientific Publishers, 2013).

³² United Nations Declaration on the Elimination of Violence against Women, 1993 (A/RES/48/104).

harm.³³ This definition shows that violence against women comprises of various forms of violence including physical, sexual and psychological violence. The European Institute of Gender Equality³⁴ distinguishes between two forms of violence i.e. Direct Violence which includes physical, psychological and economic violence perpetrated by the individuals and Indirect Violence which represents a type of structural violence characterized by the norms, attitudes and stereotypes around gender that operate within a larger societal context.³⁵

Therefore, Gender-based violence against women is a crime and a Human Rights violation that occurs often repeatedly in the lives of a great number of women around the world. Human Rights are derived from the Natural Law and cannot be taken away and are the basis on which all the legitimate law is based. There is a very strong link between Human Rights and Disability, particularly in the context of the existing reporting structures within the United Nations. Many of the basic human rights are routinely violated for this vulnerable group and States are not often consciously aware because people with disabilities are usually invisible in their democracies.³⁶

Adding to the greater vulnerability of becoming victims are a multiplicity of other factors, such as severity of disability, dependence on the abuser, communication limitations i.e. the women suffering from speech and hearing disabilities or intellectual disabilities, easy access to inmates in institutional set ups, low or non-credibility to complaints of harassment and abuse towards the women with

³³ Article 1 Declaration on the Elimination of Violence against Women, 1993.

³⁴ European Institute of Gender Equality, *What is Gender-Based Violence- Forms of Gender-Based Violence* (Sep. 12, 2017, 16:12 PM), <http://eige.europa.eu/gender-based-violence/what-gender-based-violence/forms-gender-based-violence>.

³⁵ *Id.*

³⁶ Address by M. Claire O'Connor, Director, National Disability Authority at Seminar held on 16th April, 2015 in Irish Human Rights Commission National University of Ireland Galway & Trinity College Dublin, with regard to the *Draft United Nations Treaty on the Rights of Persons with Disabilities: Towards an Effective Monitoring Mechanism*.

disabilities and the whole range of socio-economic and cultural factors that configure the lives of non-disabled women in the society.³⁷ Most women and girls with intellectual disabilities experience a range of abuses including institutionalization and neglect, physical or verbal abuse and involuntary treatment while in institutional care.³⁸

The critical areas of concern on the issue of violence against women with intellectual disabilities is found both in the institutes and at home. The Human Rights Watch conducted a study³⁹ on the violence against women with intellectual disabilities, whereby they found out that at least one or more staff members said that it was a waste of time to speak to women and girls with intellectual disabilities because they cannot communicate, their testimonies cannot be believed, or simply because “they are mad and will say anything.” When asked about the marital status of pregnant women in a mental hospital, a staff nurse told us, “Nobody is going to marry someone with ‘mental retardation’, these are mostly abuse cases.”⁴⁰ Moreover, in a government home in Delhi, a staff member explained that women with psychosocial or intellectual disabilities are barred from cooking or even entering the kitchen. She told Human Rights Watch that the mental girls don’t cook because the other girls refuse to eat food made by them. They say we won’t eat food made by the hands of a ‘mental’ person. Also because they are not clean.⁴¹

It was also found that, in some cases where girls or women with psychosocial or intellectual disabilities had sexual relationships out of wedlock, eloped, or were raped, their families chose to institutionalize the girl or woman for fear of shame and

³⁷ *Supra* note 23, at 123.

³⁸ Human Rights Watch Report, *Treated Worse than Animals: Abuses Against Women and Girls with Psychological and Intellectual Disabilities in Institutions in India*, HUMAN RIGHTS WATCH (Sep. 12, 2017, 17:20 PM), <https://www.hrw.org/report/2014/12/03/treated-worse-animals/abuses-against-women-and-girls-psychosocial-or-intellectual>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

dishonour. People with intellectual disabilities experience more violence in general when compared to those without disabilities.⁴² As is the case for people without disabilities who experience sexual violence, perpetrators are often those who are known by the victim, such as family members, acquaintances, residential care staff, transportation providers and personal care attendants.⁴³ A study conducted by the Mental Disability Rights Initiative- Serbia⁴⁴ uncovered multiple forms of violence, including forced medical treatment such as administration of contraceptives without informed consent and forced abortions and sterilisations.⁴⁵

Women and girls with psychosocial or intellectual disabilities are typically placed in three types of institutions for mental healthcare, shelter, or protection:

- a. Mental hospitals;
- b. Government or NGO-run residential care facilities; and
- c. Short-term rehabilitation facilities.

Within these places, violence can range from chaining, filthy living conditions, common bathing, and non-provision of clothes especially during menstruation, physical abuse and sexual violence which is often repetitive in nature.

Apart from the violence in the institutes, the women suffering with the Intellectual Disabilities also suffer violence and abuse in the domestic settings often at the hands of the relatives.⁴⁶ These include the deliberate acts of seclusion, denial of basic

⁴² Leigh Ann Davis, *People with Intellectual Disabilities and Sexual Violence*, THE ARC (Sep. 13, 2017, 15:21 PM), https://depts.washington.edu/healthtr/documents/intellectualdis_sexviolence.pdf.

⁴³ *Id.*

⁴⁴ United Nations Trust Fund to End Violence Against Women- *Ending Violence against women with disabilities in Serbia's custodial Institutions*, UNITED NATIONS WOMEN ORGANIZATION (Sep. 13, 2017, 15:56 PM), <http://www.unwomen.org/en/news/stories/2017/9/feature-serbia-ending-violence-against-women-with-disabilities>.

⁴⁵ *Id.*

⁴⁶ Report of office of United Nations High Commissioner for Human Rights - *Thematic Study on the issue of violence against women and girls and disability (2012)* (A/HRC/20/5), UNITED NATIONS HIGH COMMISSIONER

amenities, chaining, mental abuse, emotional deprivation and abandonment.⁴⁷ The main reasons of the violence against women due to:

- i. Difficulty in reporting maltreatment due to the lack of accessible forms of communication.
- ii. Non-accessibility of information and counselling services due to barriers in the physical environment and due to the lack of accessible forms of communication.
- iii. A greater amount of dependence on other people for care.
- iv. Being more exposed to violence as a result of living in institutions, residences and hospitals.
- v. Less risk of discovery as perceived by the perpetrator.
- vi. Less education about appropriate and inappropriate sexuality.
- vii. Long-lasting effects of electroshock and some psychiatric drugs that can impair women's ability to defend themselves against any form of violence and abuse.
- viii. Denial of human rights that results in experience of powerlessness.
- ix. Being physically and mentally less capable of defending themselves.
- x. Girls, older women, and indigenous women with disabilities might face additional barriers and violence as a result of even more complex intersectional forms of discrimination.

In spite of the severity of the discrimination, the strength of the societal prejudice against women with disabilities, and the evidence of their own experiences, violence against women with disabilities is not recognized. It is hidden and ignored, and this

FOR HUMAN RIGHTS (Sep. 25, 2017, 07:27 AM), http://women-disabilities-violence.humanrights.at/sites/default/files/otherpublications/2012_un_human_rights_council_study_on_violence_against_women_and_girls_with_disabilites.pdf.

⁴⁷ Report on Violence against Women with Disabilities (2013), WOMEN WITH DISABILITIES INDIA NETWORK (Sep. 24, 2017, 18:09 PM), http://www.wwdin.org/pdf/Report%20by%20WWDIN%20India%20Network%20for%20SRVAW_22nd%20April%202013.pdf.

fact increases their exposure to violence.⁴⁸ The paper shall now move to the Legal frameworks at the international and national level to safeguard the Human Rights of the women suffering from intellectual disabilities.

Legal Framework for the protection of Human Rights of women suffering from Intellectual Disability

Persons with disabilities often are excluded from the mainstream of the society and denied their human rights. Discrimination against persons with disabilities takes various forms, ranging from invidious discrimination, such as the denial of educational opportunities, to more subtle forms of discrimination, such as segregation and isolation because of the imposition of physical and social barriers.⁴⁹ Under the International and national law, India has an obligation to respect the rights of persons with disabilities.

4.1 International Legal Framework

All international human rights instruments protect the human rights of persons with disabilities, as they apply to all persons. This principle of universality is reinforced by the principles of equality and non-discrimination, which are included in human rights instruments.⁵⁰ United Nations Sustainable Development Goals in Para 19 specifically mentions that:

“We affirm the importance of the Universal Declaration of Human Rights as well as other international instruments relating to human rights and International Law. We emphasise the responsibilities of all states in conformity with the Charter of United Nations, to respect, protect and promote the human rights and fundamental freedoms for all, without distinction of any kind...”

The Convention on the Rights of Persons with Disabilities makes it explicit that the human rights enumerated in the major human rights documents apply with equal

⁴⁸ *Id.*

⁴⁹ Overview of International Legal Frameworks for Disability Legislation, UNITED NATIONS ENABLE (Sep. 24, 2017, 18:35 PM), <http://www.un.org/esa/socdev/enable/disovlf.htm>.

⁵⁰ *Id.*

force to individuals with disabilities. Universal Declaration of Human Rights,⁵¹ the International Covenant on Economic, Social and Cultural Rights,⁵² the International Covenant on Civil and Political Rights,⁵³ the Convention on the Elimination of Discrimination against Women, 1993 are some of the major international documents which incorporate that United Nations has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind.⁵⁴ However, the Convention on the Rights of Persons with Disabilities is the core document which expressly prohibits discrimination and requires the State parties to take measures to eradicate all forms of discrimination against individuals, including persons with disabilities.

Since the objective of this paper is focused on the Human Rights of the Women suffering from intellectual disabilities, it would be pertinent to mention the core provisions under the international documents which confer upon the women suffering from disabilities the right to an equal treatment and live a life of dignity.

The provisions are:

- i. The Preamble of the Convention on the Rights of the Persons with Disabilities clearly mentions 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.⁵⁵
- ii. The general principles of the Convention shall apply equally to women.⁵⁶
- iii. Article 6 of the Convention specifically speaks about the rights of the women suffering from disabilities. It provides that the women and girls with

⁵¹ The Universal Declaration of Human Rights, 1948 adopted by Resolution A/RES/3/217A.

⁵² The International Covenant on Economic, Social and Cultural Rights, 1966 adopted by Resolution 2200A (XXI).

⁵³ The International Covenant on Civil and Political Rights, 1996 adopted by Resolution 2200A (XXI).

⁵⁴ Para (b) of the Preamble of United Nations Convention on Rights of Persons with Disabilities, 2006.

⁵⁵ *Id* at para (q).

⁵⁶ Article 3(g) of the United Nations Convention on the Rights of Persons with Disabilities, 2006.

disabilities are subjected to multiple discriminations and it is necessary to take measures in order to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.⁵⁷

- iv. The Convention also lays down that the member parties shall lay down an effective legislation and policies which focus on women so as to ensure that instances of exploitation, violence and abuse against women with disabilities are identified, investigated and, where appropriate, prosecuted.⁵⁸
- v. There is also a need to recognize the rights of women with disabilities with regard to social protection programmes and poverty reduction programmes.⁵⁹
- vi. There should be a prohibition to subjecting any person to torture or to cruel, inhuman, or degrading treatment or punishment, including non-consensual medical or scientific experimentation. Article 15 of the Convention requires all States Parties to take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.
- vii. The highest attainable standard of physical and mental health is a fundamental human right enshrined in numerous international human rights instruments, including the Universal Declaration on Human Rights. The Convention specifically mentions that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.⁶⁰

4.2 National Legal Framework

The Constitution of India guarantees fundamental rights to all its citizens including persons with disabilities. Dignity of the individual is an essential notion

⁵⁷ Article 6(1) of the United Nations Convention on the Rights of Persons with Disabilities, 2006.

⁵⁸ Article 16(5) of the United Nations Convention on the Rights of Persons with Disabilities, 2006.

⁵⁹ Article 28(2)(b) of the United Nations Convention on the Rights of Persons with Disabilities, 2006.

⁶⁰ Article 25 of the United Nations Convention on the Rights of Persons with Disabilities, 2006.

underpinning all the fundamental rights guaranteed under Part III of the Constitution of India. Although disability is not defined in the constitution, certain clauses direct the state to make effective provision for securing the right to work, to education, and to public assistance in cases of disability, among others. The right to equality is enshrined in Article 14 of the Constitution and recognizes that all persons are equal before the law. Persons with disabilities are entitled to this guarantee to not be discriminated against in any manner and to be treated equally, which includes the requirement for special treatment where required. Article 21 of the Constitution guarantees the right to life to all persons, which has been interpreted by the Supreme Court to include the right to live with dignity,⁶¹ the right to livelihood,⁶² and the right to education.⁶³ Article 41 of the Constitution, explicitly mentions 'disablement' as a condition for which the State is to strive, to provide assistance in certain matters including education, work, etc.

Before, India ratified to the Convention on the Rights of the Persons with the Disabilities in 2007, the main legislation on disability rights was the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.⁶⁴ However, after the ratification, the government began re-drafting India's mental health and disability laws so as to bring them into line with the new international treaty.

In 2016, the Rights of Persons with Disabilities Act was passed by both the Houses of the Parliament. The Act replaced the previous Act of 1995 in order to make it compliant with the United Nations Convention on the Rights of the Persons with Disabilities. The new legislation lays down 21 conditions that are recognised as specified disabilities. Section 2(zc) of the Act, mentions that the 'specific disability'

⁶¹ Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 S.C.C 608 (India).

⁶² Olga Tellis and Others v. Bombay Municipal Corporation and Others, (1985) 3 SCC 545 (India).

⁶³ Unnikrishnan J.P. and Others v. State of Andhra Pradesh and Others, (1993) 1 SCC 645 (India).

⁶⁴ The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, No. 1, Acts of Parliament, 1996.

means the disabilities as specified under the Schedule to the Act. These conditions have been categorised under physical disability, intellectual disability, mental behaviour and disability caused due to neurological condition or blood disorders.

With regard to the rights of the women suffering from intellectual disabilities the core provisions under this Act are:

- i. The principles laid down under the Act shall apply without any discrimination equally to the women.⁶⁵
- ii. The Government and other local authorities shall ensure that the women suffering from disabilities enjoy their rights equally with others.⁶⁶
- iii. Requisite support needs to be provided to the women with disabilities for livelihood and for upbringing of their children.⁶⁷
- iv. Adequate and proper sexual and reproductive healthcare for the women suffering from disabilities.⁶⁸
- v. There should be a formulation of schemes and programmes in order to support the employment of women with disabilities, especially by laying down skill training programmes.⁶⁹
- vi. There shall be a reservation of 1% posts in the Government establishments for the persons who are suffering from intellectual disabilities.⁷⁰

Apart from the Persons with the Disabilities Act, 2016, India welcomed a new legislation dealing with mental health i.e. the Mental Healthcare Act, 2017.⁷¹ The Act aims to provide a right to access to the mental healthcare and treatment i.e. providing mental health services at an affordable cost, of good quality, available in

⁶⁵ Preamble to The Persons with Disabilities Act, 2016.

⁶⁶ Article 4(1) of The Persons with Disabilities Act, 2016.

⁶⁷ Article 24(2) (d) of The Persons with Disabilities Act, 2016.

⁶⁸ Article 25(2) (k) of The Persons with Disabilities Act, 2016.

⁶⁹ Article 19(2) (c) The Persons with Disabilities Act, 2016.

⁷⁰ Article 34(1) (d) of The Persons with Disabilities Act, 2016.

⁷¹ The Mental Healthcare Act, 2017, No. 10, Acts of Parliament, 2017 (India).

sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.⁷² With regard to the women the Act mentions that every person suffering from mental illness shall be given proper healthcare and there shall be no discrimination⁷³ made on the basis of gender or disability.⁷⁴

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities⁷⁵ also provides multiple schemes and services, including health insurance, for persons with developmental or intellectual disabilities, but its scope and reach are limited. As a result, families lack awareness and support in their day-to-day lives. Unable to cope with caring for a relative with a psychosocial or intellectual disability, families often dump them in state mental hospitals or residential care institutions. Once in there, people with disabilities experience a range of abuses and even death.⁷⁶

There are a lot of women around the world who are suffering from disability. For women with disabilities, gender-based violence is often compounded by disability-based discrimination.⁷⁷ Unfortunately, too many existing programmes meant to prevent gender-based violence do not take into account the unique dangers and challenges faced by women with disabilities. Without specific attention and solutions these women have been left behind and are at risk.

⁷² Article 18(2) of Mental Healthcare Act, 2017.

⁷³ Article 22 (1) of The Persons with Disabilities Act, 2016.

⁷⁴ Article 22(1) (a) of The Persons with Disabilities Act, 2016.

⁷⁵ The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, 1999, No. 44, Acts of Parliament, 1999 (India).

⁷⁶ *Id.*

⁷⁷ ADD International Approach- A Learning Paper, *Disability and Gender based Violence*, ADD ORGANIZATION (Sep.28, 2017, 17:12 PM),

https://www.add.org.uk/sites/default/files/Gender_Based_Violence_Learning_Paper.pdf

Challenges and Recommendations

From the detailed discussion above, it is clear that women with intellectual disabilities suffer from high rates of violence be it physical, sexual or psychological in nature. Human Rights law defines this as a violence accomplished by physical force, legal compulsion, economic coercion, intimidation, psychological manipulation, deception and misinformation and in which the absence of free and informed consent is a key analytical component.⁷⁸ There are various international and national instruments which lay down the law for the protection of women suffering from disabilities. However, the state institutions are failing in performing these duties. There are many reasons for the same including:

- i. The most important reason is the prejudice associated with the disability. Persons with disabilities are still regarded as recipients of charity or objects of others decisions, rather than people with the right and autonomy to make their decisions.⁷⁹
- ii. Isolation and exclusion from the society poses another threat to the well-being of women suffering from intellectual disabilities.
- iii. Exploitation of the women and girls with mild intellectual disabilities by fellow residents or staff in the institutions is yet another challenge.
- iv. There is lack of access to justice. In other words the justice system can be very challenging for people with disabilities, particularly people with psychological or intellectual disabilities.⁸⁰

⁷⁸ Remarks by United Nations Resident Coordinator Louisa Vinton at the *Violence against women with disabilities: Challenges and Perspectives* Conference, United Nations Development Programme

(Sep. 28, 2017, 17:32 PM),

http://www.mk.undp.org/content/the_former_yugoslav_republic_of_macedonia/en/home/presscenter/speeches/2015/12/02/remarks-by-un-resident-coordinator-louisa-vinton-at-the-violence-against-women-with-disabilities-challenges-and-perspectives-conference-.html.

⁷⁹ *Id.*

⁸⁰ *Supra* note 37, at 74.

- v. Women with intellectual disabilities also face barriers while reporting and having criminal complaints registered and investigated in cases of sexual violence. The police often refuse to register a case because they are not convinced that the survivor is telling the truth or can identify or remember the perpetrator.⁸¹
- vi. Women labelled with intellectual disabilities are likely to be silenced and ignored when speaking out or attempting to defend themselves, particularly when the violence is authorized by law or committed in a context where the woman is deprived of her legal capacity or freedom.
- vii. Professionals who work with women who have experienced abuse often do not recognise that women with disabilities are in the same situations, either because they do not have the information or because they do not recognize acts they believe to be associated with disability, including forced institutionalization and forced interventions, as acts of violence.⁸²

In order to meet these challenges, the author has made the following recommendations:

- i. There should be requisite steps taken by the appropriate Government to improve the conditions of the institutions where the women suffering with disabilities are kept, so as to ensure that the Human Rights of such women are respected and protected. This can be done by issuing guidelines for sanitation, hygiene, and living conditions and prohibiting arbitrary detention without judicial review and involuntary electroconvulsive therapy.

⁸¹ Women with Disabilities Australia (WWDA) Resource Manual on Violence against Women with Disabilities – Booklet 2: *Forgotten Sisters – A global review of violence against women with disabilities*, WOMEN WITH DISABILITIES AUSTRALIA (Sep. 30, 2017, 09:12 AM), http://wwda.org.au/wp-content/uploads/2013/12/Forgotten_Sisters.pdf.

⁸² Document on Violence against Women with Disabilities, International Network of Women with Disabilities (INWWD), WOMEN WITH DISABILITIES AUSTRALIA (Sep. 30, 2017, 09:41 AM), <http://wwda.org.au/wp-content/uploads/2013/12/inwwdviol2010.pdf>.

- ii. An independent and confidential complaint mechanism must be created which can receive and investigate complaints on a confidential basis, about ill-treatment of women with intellectual disabilities in institutions.
- iii. There is a need to take measures to fight stigma, discrimination and all forms of violence against women and girls with disabilities, for example through awareness campaigns and community discussions.
- iv. Education must be imparted to women and girls with disabilities about their human rights. All the government and privately-run institutions need to provide accessible information to women with intellectual disabilities and inform them about their rights and complaint procedures.
- v. The causes of all forms of violence against women with disabilities needs to be investigated with regard to the isolation and victimization that can contribute to violence in such circumstances.
- vi. There should be proper allocation of funds by the appropriate governments and specific budgets should be created for community support programs and independent and supportive living arrangements for women with intellectual disabilities. Moreover, a body composed primarily of experts with disabilities must also be created in order to monitor and assess the effectiveness of community-based support services.
- vii. Ensure that the staff in general hospitals and at institutions are trained to accommodate women with disabilities and are sensitive to their needs.
- viii. Lastly, The National and the State Human Rights Commission along with the National Commission for Women must also ensure regular and periodic monitoring of conditions in mental hospitals and institutions women with intellectual disabilities.

Conclusion

Many women with disabilities see themselves as victims of maltreatment and abuse, while society ignores the problem. However, some women with disabilities may not see themselves as victims of violence because they consider their situations habitual and associated with disability. In some situations society refuses to recognize that

certain acts constitute violence, and the women who experience them may or may not consider themselves as victims. This is particularly true with respect to acts authorized under domestic law, such as forced psychiatric interventions with mind-altering drugs, electroshock or psychosurgery, institutionalization, restraints and isolation, which are practiced primarily on women with psychosocial disabilities and women with intellectual disabilities. Gender is a major factor in mental health conditions. Depression, which is the leading cause of disability and is expected to be the second largest cause of the global disease burden by 2020, is reported to be twice as common in women when compared to men.⁸³

Women and girls with intellectual disabilities in India experience widespread violations of their rights, including denial of legal capacity, the right to make one's own decisions and a lack of community-based support and services. They are particularly vulnerable to being admitted without their consent to institutions where they face a range of abuses, including neglect, verbal and physical violence, and involuntary treatment. With the coming of the Persons with Disabilities Act, 2016 and Mental Healthcare Act, 2017, a new ray of hope has emerged for the persons who are suffering from various disabilities. However, still there is a need to undertake urgent reforms to guarantee the legal capacity of women with intellectual disabilities and take steps to shift from institutional to community-based care and services for people with disabilities.

There are no specific programs for women with disabilities, only some homes for destitute women. The security of women with disabilities is the biggest challenge. Women with disabilities don't get support from their families and are deprived from home. Moreover, the lack of adequate monitoring of both state-run and private mental hospitals and residential care institutions for women with intellectual disabilities. It is essential that State Mental Health Authorities as well as

⁸³ United Nations Expert Group Meeting on *Mental Well-being, Disability and Development: Conclusions and Recommendations for Inclusion of Mental Well-being and Disability into Key Goals and Outcomes of Upcoming International Conferences* (May 2013), UNITED NATIONS ORGANIZATION (Sep. 30, 2017, 19:42 PM), http://www.un.org/disabilities/documents/hlmdd/UNU_EGM_MWDD_2013.pdf.

independent bodies such as the National Human Rights Commission regularly monitor residential care institutions as well as community-based services such as the District Mental Health Programme to ensure quality of care and informed consent. Therefore, to protect the Human Rights of women suffering from intellectual disabilities is the dire need of the hour. Till the human dignity is respected and upheld all the legislations and efforts are futile. As Ban-Ki Moon, the former Secretary General of United Nations states:

“Let us work together for a world of opportunity and dignity for all, a future of inclusion, one in which we all gain by leaving no one behind.”⁸⁴

⁸⁴ Former Secretary General of United Nations, Ban-Ki Moon in a video message referring to the artists from the beautiful Mind Charity “4WheelCity”, UN NEWS CENTRE (Sep. 30, 20:39 PM), <http://www.un.org/apps/news/story.asp?NewsID=54225#.WdUBno-CzIU>.