

Status of Disabled Women in India - A Psycho-Social and Legal Analysis Gurmangeet Kaur Pandey*

Abstract

The objective of this study is to analyze what problems disabled women face in culturally traditional and gendered Indian society and access how far Indian legislations, International declarations, and conventions are successful in resolving these problems. This paper discusses how disabled women are perceived in Indian history and society and what happens at the intersection of gender and disability with the disability movement in India being largely male-dominated. An attempt is made to examine the United Nations Declaration on the Rights of Disabled Persons, 1975, the Convention on the Rights of Persons with Disabilities adopted in 2006 (which came into force in 2008), and two Indian legislations: the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and the Rights of Persons with Disabilities Act, 2016 (hereinafter referred as PWD Act and RPWD Act respectively). India is a signatory to the Convention on the Rights of Persons with Disabilities, 2008. RPWD Act of 2016 came into force to give effect to the United Nations Convention on the Rights of Persons with Disabilities. RPWD Act of 2016 replaced the PWD Act of 1995. It was found that the PWD Act of 1995 was not inclusive of disabled women but the RPWD Act of 2016 made major strides in recognizing the rights of disabled women. But still, there are some weaknesses as far as the implementation of the RPWD Act is concerned in letter and spirit. Also, this Act doesn't completely address the practicable problems which women with disabilities face in their lives.

Keywords: Disability, disabled women, RPWD Act of 2016.

The Union of Physically Impaired against Segregation (UPIAS) defines disability as the disadvantage or restrictions caused by a contemporary social organization that takes little or no amount of people with physical impairments and thus excludes them from mainstream social activities (Ghai, 2003, 31). There is a considerable difference between disability and impairment. Impairment means lacking a part of a limb or having a defective limb, organism, or mechanism of the body. Hence disability is a social and impairment is biological. There are two significant models of disability: Medical and social. In the medical model problem of disability is primarily found within individuals and thrust is given to medical cure as both problem and solution lie within the individual itself. However, the social model challenges the medical model as the former finds solutions within society itself and its primary concern is with the socio economic aspect of disability. This means people do not become disabled in a social vacuum. Instead, disability is socially constructed (Ghai, 2003, 34-43). Socio-cultural factors determine the standards of normality and exclude those who do not meet them. The problem becomes deeper when there is an intersection of gender and disability as it further leads to double discrimination if the disabled person is a woman. Both gender and disability are social constructions. Intersectionality of caste, class, gender, and disability plays an important role in India.

Historical and Mythological Background

If we see from a historical and mythological point of view disability as a condition has been most of the time looked down upon. We rarely see the depiction of disabled people in Indian mythologies in a positive manner no matter whether a person is a man or a

woman. The most prominent example can be of *Manthra* from *Ramayana*. She was a dwarf woman who had a hunched back. She is portrayed as the one who provoked *Kaikeyi* to send *Rama* into exile for fourteen years so that *Kaikeyi's* son *Bharat* can ascend the throne. Here she is portrayed as crooked and evil-minded. Her orthopaedic disability is connected with crookedness and cunningness. In *Ramayana*, *Laxmana* cuts off the nose of *Shrupnakha*, who was the sister of *Ravan* because she was interested in him. *Laxmana* responded to this 'non-acceptable behaviour by disabling her face. This reveals how disability and desexing are correlated in Indian Society.

We can refer to two examples in *Mahabharata*. One is of *Shakuni* and the other is of *Dhritrashtra*. *Shakuni* was orthopedically impaired and is shown as a manipulative, crooked, cunning person. He is most of the time blamed for being responsible for the occurrence of the *Mahabharata* war as he was the one who provoked *Kauravas* against *Pandavas*. *Dhritrashtra* was visually impaired, that's why despite being the eldest son he was not allowed to ascend the throne of *Hastinapur* because his blindness rendered him incapable of fighting in the war. We can say that disability has been linked to crookedness, evil-mindedness, manipulativeness, and inability in Indian mythologies. Many times disability is seen as punishment for bad sins committed in past life.

We can also refer to interpretations of *Manusmriti* by several scholars. For example according to interpretation by Wendi Doniger and Brian, K Smith it is mentioned in *Manusmriti* that a man may reject a girl if she is ill, despised, or corrupted even if he has accepted a girl following rules. And *Manusmriti* also

allows annulment of marriage if anyone gives away his daughter with a flaw and conceals it (Ghai, 2003, 62).

Psychological problems of Disabled women

Disabled people face numerous psychological problems. Problems faced by disabled men and women are identical but disabled women are more prone to the same psychological problems than disabled men due to the intersection of disability and gender. A number of psychological problems have been observed in physically disabled women. Three prominent problems are depression, stress, and low self-esteem. Disabled women are more likely to suffer depression than disabled men. Due to social, psychological, economic, and biological factors, disabled women become more susceptible to depression. Lack of social integration, low-income support, poverty, and abuse contribute to depression. Depression may also be a result of medications and cerebral involvement. Disabled women are more susceptible to social isolation, violence, victimization, chronic health problems, and poverty than disabled men. They are economically disadvantaged and this results in the emergence of stress-inducing factors. Higher levels of stress are observed in women with disabilities.

Women with disability are also prone to low self-esteem due to their economically disadvantageous position in society. It has been reported that one out of three adult women with a disability lives in poverty. Only one out of four men with a disability live in poverty. That's why women with disability are termed as the poorest of the poor. They are deprived of career opportunities and the right to equal treatment. That's why they are looked at in society as economically passive. This decreases their sense of self-worth. They are also humiliated and marginalized in society. According to Cooley's looking-glass self-theory, an individual develops a sense of self by observing how he is perceived in by others in society (Horton & Hunt, 1984, 94-96). Disabled women face humiliation and insults from the beginning which in turn lowers their self-esteem. From the very start, they are made to believe that they are less capable than 'normal' people. This eventually results in this mindset being internalized by disabled women.

Present Social Status of Disabled Women

According to famous Indian academician Anita Ghai who is known for her remarkable work in areas of gender, sexuality, and disability, concerns of disabled women in India have been overlooked. Disability movements in India have been largely male-dominated, portraying their masculine bias by overlooking concerns such as sexuality, family, and motherhood of disabled women. Disabled women go through a difficult childhood, especially in a society like India where sons are seen as future heirs and parents look upon them as supporters of old age. Here disabled women are seen as dependent and

passive. This can be summarized in one phrase which we often heard at the birth of a disabled girl child: '*Ek toh ladki upar se apahij , isse acha toh mar hi jaati*' (Ghai, 2003, 58). Disabled girls often lead a life full of stigmas, marginalization, and humiliation. Girl children often internalize a dominant and powerful social voice which teaches them that she has no right to demand even what is rightfully her own (Ghai, 2003, 58). This double discrimination becomes triple if a girl is born into a financially weak and poor family. Here comes a deadly combination of class, gender, and disability. In this scenario chances that a girl will be given a proper opportunity to get educated become too bleak.

Apart from this, there is a non-availability of traditional roles. There is a cultural value attached to wifehood and motherhood in India (Ghai, 2003, 61). In the Indian context, disability renders the task of finding a good groom for women difficult. The general mindset is that it is difficult to marry a 'normal' daughter without a dowry. That's why disabled daughters are considered a double burden. Even disabled men contribute to devaluing disabled women. Not only non-disabled men but also disabled men want non-disabled women as their wives. Anita Ghai cites an example of a blind girl who says that visually impaired men often prefer sighted girls. Motherhood is denied to disabled women. They are made to internalise the fact that motherhood is not for them. Sometimes it is believed that a disabled mother will give birth to a disabled child. For them, motherhood and wifehood become difficult aspirations.

Moreover, disabled girls are considered sexually safe and asexual. It is perceived that people with deviant bodies do not need sexual fulfilment and do not experience sexual desires. This also disregards the dangers of sexual violence which disabled women are exposed to. Many times girls are victims of sexual abuse by close male relatives (Ghai, 2003, 78).

Mothering and upbringing a disabled daughter is also a very difficult task. In a society, where the birth of a male child validates the social status of a mother, mother blaming becomes severe if she gives birth to a disabled girl child. She faces ridicule for giving birth to a disabled child which is seen as punishment for bad sins committed by her in her past life. She is held responsible for the disability of her child. Due to this, mothers themselves become carriers of societal oppression (Ghai, 2003, 75). They may undergo numerous pregnancies to bear a 'normal' child, specifically a 'normal' male child. Many times due to societal oppression they become frustrated and become harsh towards their disabled children. The majority of people also hesitate to adopt a disabled child. Hence, the chances of adopting a disabled girl child remain a poor possibility.

Legislative Aspect

Although the rights of the differently abled had remained a cause of concern at the international level,

the United Nations Declaration on the Rights of Disabled Persons, 1975 has little mention of discrimination against disabled women. The above-mentioned Declaration of 1975 has a common reference for the protection of the rights of disabled persons. In this declaration, various rights of disabled persons were recognized including rights to medical, psychological, and functional treatment, the same civil and political rights of a normal human being, and rights against exploitation. In the declaration, the right of disabled persons to their human dignity and their right to live with their family were also recognized. This declaration proclaims that these rights shall be granted to all disabled persons irrespective of their race, color, sex, language, religion, political opinions, social and national origin, and wealth status. Hence this declaration we find little reference to the problems of disabled women. The only reference in this context we find in the above-mentioned declaration is the anti-discrimination clause. It does not explicitly take into account the larger problems which barge in when there is an intersection of gender and disability (United Nations, n.d.).

The PWD Act, 1995 (Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) had no mention of discrimination against disabled women. It had a wide range of provisions dealing with education, employment, affirmative actions, and non-discrimination. But this Act largely failed to be inclusive of disabled women. Even in the non-discrimination clause, we do not find any simple reference to women. Women are left out of this legislation. The definition of Disability provided under this Act is also incomplete. It only describes the disability in terms of impairment. Limitations resulting from an impairment that has social and cultural meanings are not reflected in the definition provided in the Act.

But we can notice that winds of change started to blow with the beginning of the new millennium. Both the United Nations convention on the Rights of People with Disabilities (2008) and the RPWD Act, of 2016 take into account the discrimination that disabled women are subject to.

In the preamble of the United Nations Convention, it is recognized that disabled girls and disabled women are usually at greater risk of exploitation, abuse, violence, maltreatment, injury, and negligent treatment both within and beyond the boundaries of the home. Article 3 of the Convention states equality between men and women as one of its principles. Article 6 very explicitly deals with women with disabilities. It emphasises the importance of state intervention by recognizing the vulnerabilities of disabled women in society and discrimination against them and further protecting their rights both human as well as fundamental. Article 16 relates to freedom from exploitation, violence, and abuse and its clause

5 mandates State Parties to put in place effective laws including women and child-centric policies to ensure that incidents of violence, exploitation, and abuse against persons with disabilities are identified, investigated, and indicted. Article 28 provides for the recognition of the rights of persons with disability to social protection and an adequate level of living. Clause 2(b) of article 28 requires state parties to guarantee access to social protection programs and poverty alleviation programs by disabled women and girls. (United Nations, n.d.)

Similarly, equality between men and women is one of the objectives of the RPWD Act, 2016 (*The Rights of Persons with Disabilities Act, 2016*). Section 4 of the Act is identical to Article 6 of the UN convention and requires the government to take appropriate measures to ensure that women and children with disabilities enjoy their rights equally with others. Section 24(3)(d) of the Act states that to ensure social security appropriate government shall make schemes and policies to support women with disability for livelihood and the upbringing of their children. Section 25 (2)(k) of the Act provides for sexual and reproductive healthcare, especially for women with disability. RPWD Act also has provisions for affirmative action for disabled women. Section 37 of the Act provides for 5% of reservation in allotment of agricultural land, housing schemes, developmental programs, and poverty reduction schemes with priority given to women with benchmark disabilities. Under penal law also there is stringent punishment for committing heinous crimes of rape against disabled women. Section 376 (2)(l) of the Indian Penal Code provides that whoever commits rape on a woman suffering from mental and physical disability shall be punished with rigorous imprisonment for a term which shall not be less than ten years. Imprisonment may also extend to imprisonment for life and a fine may also be imposed on that person (*Universal's Criminal Manual, 2011, 549-550*).

RPWD Act, 2016 Acts is a ray of hope for disabled women. The word 'women' has been several times mentioned in the Act. But it has certain advantages as well as loopholes. Section 10 which deals with reproductive rights is inclusive of women. This provision ensures that disabled persons have access to appropriate reproductive and family planning information. No person with a disability shall be subject to any medical procedure that leads to infertility without informed consent. As mentioned above, disabled women are considered asexual and not fit for motherhood and this provision is very important in a society where such a mindset prevails. But section 92 (f) of the Act which deals with the termination of pregnancy is a cause for concern. The section mentions that the pregnancy of woman with a disability cannot be terminated without her consent except in case of severe disabilities. The Act fails to define what exactly severe disability is. For example, if a woman is 98% visually impaired, is she severely

disabled for the purpose of this section? As mentioned above women with disabilities are prone to sexual violence which often goes unnoticed. The issue of termination of pregnancy becomes important in such cases.

Section 4 of the Act which talks about Women and Children with disabilities does not go down well with scholars as they object to clubbing women and children together. As mentioned above, disabled girls grow up in troubled environments. They should have the right to a home and family in which they are not marginalized and humiliated. Section 9 of the RPWD Act deals with home and family and this provision can be a double-edged sword. It states that no child can be separated from home and family on grounds of disability. This reveals the general assumption that disabled girls do not face abuse and violence in their natal families. This provision doesn't take into account how difficult is to mother a disabled daughter and what kind of difficult childhood disabled girls go through. This provision states that if parents are unable to look after the disabled child then the court is empowered to send such child to his or her near relatives and in exceptional cases to a shelter home run by the government or NGOs. The fact that disabled girls grow up in a family in which they are insulted, marginalized, and deprived of resources is entirely ignored in this provision. Instead, it should be ensured that girls are not made to grow in such an environment.

Sections 11 and 12 of the Act provide for accessibility to voting and access to justice. But lack of adequate implementation is a problem. Disabled women do not have proper access to justice. General laws for women at present are not inclusive of disabled women. Let's take the example of the Prevention of Sexual Harassment at Work Place Act, of 2013. There is no attention given to the question of whether the Act is accessible to disabled women or not. What if a woman is speech impaired? How will the internal complaints committee interact with her? Physical inaccessibility is also a cause of concern despite the provision of access to justice. Just going out and filing a complaint becomes a tedious task for her. Police stations and courts are out of her access (Banerjee & Banerj, 2017).

Another issue that is not paid attention to in this women and disability discourse is the underrepresentation of women in politics. There is no provision for the representation of persons with disability in Parliament. In 2011, A. Kavita who was a hearing and speech-impaired tailor in Villupuram district in Tamil Nadu was disqualified to fight civic polls because a 'deaf-mute' person was not allowed to contest elections according to Tamil Nadu Panchayat Act, 1994. But there was light at the end of the tunnel. In 2012, after this incident, the Act was amended and the clause which disqualified people having visual and hearing impairment and leprosy was removed. In 2021 she again filed her nomination

and that year almost 40 disabled people were in the race for the post of panchayat counsellors, district counsellors, and union ward counsellors. (Tamil Nadu Civic Polls: Breaking Barriers, Nearly 40 Disabled Candidates in Fray | Chennai News, 2021) But still ensuring representation of disabled women in Parliament, State Legislators and Civic Bodies is a long road ahead because the overall representation of disabled persons is itself very scarce.

RPWD Act can be seen as path breaking legislation but still, it fails to give holistic protection and representation to women with disabilities. It provides social security but it fails to take a holistic view of the problems that disabled women face at large. The Act should be made according to the sociocultural environment of India. The Act was enacted to give effect to the United Nations convention. But the provisions should be tailored according to the socio-cultural scenario of India. Because the problems disabled women face in India are different from the problems disabled women face in the USA or UK. In India intersectionality of caste, class, gender and disability make problems of Indian disabled women different from the disabled women in the USA, where maybe race becomes a factor instead of caste. RPWD Act, 2016 needs improvement by keeping in mind the status of disabled women in the Indian Socioeconomic context. Also, there is always a difference between law and law enforcement. Efforts should be made to enforce the RPWD Act in both letter and spirit.

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