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# **THE SUFFERING OF A POOR WOMAN WITH DISABILITIES**

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## **ABSTRACT**

The disabled community is frequently associated with feelings of empathy, dependence, and constant aid. It is unfortunate that the notion of 'disabled' itself is often restricted to physical deformity, thereby, neglecting the other forms of disability. Accompanied with institutional barriers such as poverty and gender, disability exacerbates the existing living conditions for the disabled community. This paper shall focus on the intersection of disability, poverty, and gender in light of 'The Rights of Persons with Disabilities Act 2016' using judicial pronouncements, statutory provisions, and scholarly works. It shall further expound on the discrepancies in the provisions and highlight the ineffectiveness of the Act. Lastly, the paper will provide possible solutions to ameliorate the status of impoverished, disabled women.

*“It has been said that life has treated me harshly; and sometimes I have complained in my heart because many pleasures of human experience have been withheld from me...if much has been denied me, much, very much, has been given me. Science may have found a cure for most evils but it has found no remedy for the worst of them; the apathy of human beings”*

**-Helen Keller**

## **1. INTRODUCTION**

The understanding of disability in India should be understood as part of its cultural discourse in subtle tones.<sup>1</sup> There remains an inherent bias that a person with a disability will be unable to carry out tasks due to their defining incapacity and prevailing condition.<sup>2</sup> Despite the fact that countries' unrivaled economic development is frequently hailed, the serious difficulties confronting the low-income disabled community generally go neglected. This community seems to be confined to the inactions of the State, vicious patterns of helpless cynicism<sup>3</sup>, lack of awareness among the citizens followed by the implementation of temporary policies that do not offer any permanent solutions, specially to the women. Needless to say, one of the major reasons that contributes to the hardships of a disabled women is the State's failure to support them with basic education, employment opportunities, shelter and proper medical infrastructure. This paper seeks to elaborate on 'The Rights of Persons with Disabilities Act 2016', and the intersection of disability, poverty and gender using secondary data, case jurisprudence and statutory provisions. It further highlights the discrepancies in the Act and the ineffectiveness in its applicability. Lastly, it seeks to suggest possible solutions that could ameliorate the situation, if not entirely eliminate the problem faced by the disabled community, involving women.

## **2. DISABILITY, POVERTY AND GENDER: AN INTERSECTION**

Disability often tends to have a negative connotation in the society, associated with feelings of dependence and constant aid. This image prevails in the contemporary times as there exists a lack of systemic research and historical awareness about the community.<sup>4</sup> Consequently, the

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<sup>1</sup> Anita Ghai, *Disability and the Life Course: Global Perspective 27* (Cambridge University Press, 2001).

<sup>2</sup>Nilika Mehrotra, *Disability, Gender and Caste Intersections in Indian Economy*, RESEARCH GATE (2013), [https://www.researchgate.net/publication/290052340\\_Disability\\_gender\\_and\\_caste\\_intersections\\_in\\_Indian\\_economy](https://www.researchgate.net/publication/290052340_Disability_gender_and_caste_intersections_in_Indian_economy).

<sup>3</sup> Ghai, *supra* note 1, at 28.

<sup>4</sup> Ghai, *supra* note 1, at 27.

construction of 'disabled people' is often seen as a disadvantage, predominantly from a medical angle. Another interpretation of disability can be understood as a cultural and social construct that tends to produce incapacitating effects on disabled people.<sup>5</sup> This interpretation is quite relevant in India since disability can be perceived as product of cultural impediments that include stereotypes, prejudice, religious beliefs along with structural impediments such as poverty, gender, illiteracy, class, caste and unemployment that worsen the existing conditions. It is the struggle to grasp a living with adequate facilities, required for survival. In addition, instead of collaborating with disabled people to help them, the society often shuns them and categorizes them as the "other" which ultimately defines who a 'normal' person is.<sup>6</sup> However, the society chooses to define disability, its definition is heterogeneous and involves more than just a physical impairment such as the consideration of social, cultural and economic constructs of disability.

On the other hand, it is unfortunate that the World Bank report demonstrates that more than eighteen million disabled persons are largely located in rural households.<sup>7</sup> Every minute, more than 30 women are injured and 15-50 million of them generally go unnoticed.<sup>8</sup> The grave concerns of inequality and injustice seem more severe than shocking categories that comprise torture, sexual abuse and even war.<sup>9</sup> Poverty is the most devastating, particularly for women whose survival becomes precarious. In a study by Erb and Harriss-White, evidence has stated that the severity of disability had to be greater for women as they were absolved of the responsibility of being economically active.<sup>10</sup>

This is a clear indication that there is an underlying expectation from women to continue their domestic duties, regardless of their disability, which is non-remunerative.<sup>11</sup> Accompanied with poor physical health, lack of medical care, financial constraints, negligible educational status and as victims of poverty, women end up having highly risky pregnancies and malnourished babies, whose chance of acquiring impairment increases drastically.<sup>12</sup> Apart from the lack of

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<sup>5</sup> id 297.

<sup>6</sup> Mehrotra, *supra* note 2, at 297.

<sup>7</sup> World Bank, *People with disabilities in India: From commitments to outcomes?*, WORLD BANK (2007), <https://documents1.worldbank.org/curated/en/358151468268839622/pdf/415850IN0Disab1ort0NOV200701PUBLIC1.pdf>.

<sup>8</sup> Helen Meekosha, *Gender and Disability*, UNIVERSITY OF LEEDS (2004), <https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/meekosha-meekosha.pdf>.

<sup>9</sup> Ghai, *supra* note 1, at 29.

<sup>10</sup> Mehrotra, *supra* note 2, at 299.

<sup>11</sup> Mehrotra, *supra* note 2, at 313.

<sup>12</sup> Ghai, *supra* note 1, at 30.

support from the government and the society, in general, disabled women tend to face more difficulties and are subject to prejudice in all spheres of their lives. There is rampant inequality when it comes to training, decision-making, hiring and equal pay for disabled women.<sup>13</sup> As a result, disabled women are overburdened with finding paid employment, access to basic amenities which are quite limited in nature, manage household duties, childbirth and continue to be excluded from the community. Apart from the existing obstacles, evidence supports that women also face challenges while overcoming disabling environments and achieving equal outcomes.<sup>14</sup> In fact, gender stereotypes interact with disability stereotypes, over a prolonged period to form a deeper matrix of gender disability across all cultures, in a specific historical context.<sup>15</sup> If this were not enough, they are further subjected to sexual abuse and are rarely allowed to participate in economic decision-making. Disabled women are generally overlooked by feminists and their perspective is either lost or directly at variance with the feminist analysis.<sup>16</sup> Additionally, it is unfortunate that the State continues to rely on the voluntary sector to ensure the basic needs of disabled people is met, though this sector barely covers a minuscule proportion of the larger community of poor disabled women, who go unnoticed.<sup>17</sup>

### 3. RIGHTS OF DISABILITIES ACT 2016 AND THE INDIAN CONSTITUTION

There is a pressing need to raise awareness among the corporate sector to actively recognize disabled persons, respect their differences and provide an equal opportunity to them. The principle actively reflects a paradigm shift in perceiving the concept of ‘disability’ as a ‘human rights issue’ instead of a ‘social welfare concern’.<sup>18</sup>

The Rights of Disabilities Act 2016 aims to safeguard the disabled community from relentless discrimination, increase opportunities for effective participation in both public and private sectors, in order to ensure adequate accessibility to those in need. Prior to the enactment of this Act, the legislation on the rights of the disabled persons was disorderly scattered across the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act,

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<sup>13</sup> Department of Economic and Social Affairs Disability, *Women and girls with disabilities*, UNITED NATIONS (2010) <https://www.un.org/development/desa/disabilities/issues/women-and-girls-with-disabilities.html>.

<sup>14</sup> Meekosha, *supra* note 8, at 12.

<sup>15</sup> Meekosha, *supra* note 8, 9.

<sup>16</sup> Amy T Wilson, *Gender equity for people with disabilities* (2nd edn, Lawrence Erlbaum Associates, 2007)

<sup>17</sup> Ghai, *supra* note 1, at 28.

<sup>18</sup> Thomas John et. al., *The Rights of Persons with Disabilities Act, 2016: Does it address the needs of the persons with mental illness and their families*, NCBI (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5419007>

1995, the Mental Health Act, 1983, the Rehabilitation Council Act of India, the National Trust (for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities) Act, 1999 and the Indian Constitution.<sup>19</sup>

The difference between the old and the new law is that the former did not provide substantial provisions to promote equality specifically in the employment context.<sup>20</sup> The new set of obligations have cast a mandatory duty on private employers to frame an 'Equal Opportunity Policy' and make it public. Additionally, the new law is not just limited to the socio-economic conditions but further extends to justiciable rights of the disabled persons.<sup>21</sup> While it is a decent attempt by the Government to make the society more inclusive towards the disabled persons, we shall further see whether this Act has managed to affect the lives of the disabled persons or continues to be one of the statutes that await strict implementation. The provisions of the Act compel the government to carry out sensitization schemes and awareness campaigns to encourage and promote a healthier society, with the inclusion of the disabled persons. The nomenclature of 'mental retardation' has now been replaced with 'intellectual disability', and the Act provides an elaborate definition on the same. Effective changes such as providing a comprehensive list of impairments have been extended from seven to twenty-one conditions symbolizing awareness and sensitivity towards the disabled persons. Unlike the former laws, the new statute goes over and above physical impairment.

Unfortunately, this piece of legislation fails to provide for a specific timeline ensuring compliance under the Disabilities Act, 2016.<sup>22</sup> While it requires employers to include special leaves and accommodation facility in their policy, it does not adequately clarify the quantum of special leaves or the purposes under which such 'special' leaves can be availed.<sup>23</sup> Though the private sector has a corporate social responsibility towards the society, this statute does not provide any incentives to private establishments to enable them to set-off the additional costs incurred in ensuring accessibility norms, providing training or employing assistive devices.<sup>24</sup> The law prohibits discrimination and measures ought to be taken to protect the disabled against cruelty, abuse and exploitation. But a question that may arise is, how does one effectively report

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<sup>19</sup> Nishanth Ravidran et. al., *India's New Law on Disability Extends to Private Employers*, NISHITH DESAI (30 June 2017), <http://www.nishithdesai.com/information/news-storage/news-details/article/indias-new-law-on-disability-extends-to-private-employers.html>

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

a complaint pertaining to discrimination and prejudicial slurs? There even lacks a robust mechanism for grievance redressal.

Section 7(2) of the Act provides that persons and organizations **may** report to the local Magistrate. Thus, such a discretionary condition fails to establish an obligation on citizens or provide for an effective manner to register complaints. The same provision criminalizes family members or providers for giving treatment to sailed persons with severe mental illness, even if the person is at a clear risk to others.<sup>25</sup> In India, apart from the inadequate healthcare facilities, there continues to exist a taboo around mental health. In such a case, a family could be an incredibly important asset to provide healthcare and the required support to the disabled person. Regrettably, such a clause is restricted in nature, and caregivers may end up becoming less inclined towards helping a disabled person to avoid hassles with the police.

After a thorough interpretation of the statutory provisions, there seems to be an underlying universal presumption about the legal capacity of all disabled persons. An existence of a mental impairment inevitably denies them the right to compete at the same level. Several clauses such as Section 62(1) and 68(1) disqualify ‘*a person of unsound mind, declared so by a competent court*’ from becoming the members of the Central and State Advisory Boards respectively<sup>26</sup> Lesser seats for jobs reserved for disabled persons also indicates an abhorrent assumption and mistrust among the community that these people are incapable to a great extent. If the Act itself provides a law that is based on misassumptions and prejudice, it is unlikely the Act will be of any use to sensitize Indian citizens and provide an equal chance to disabled persons. The Act, no matter how “progressive” in its words, will hinder the active participation of disabled persons who will silently continue to suffer. This statute has unfortunately put the onus on the State to proactively undertake the responsibility to safeguard the interests of the disabled through policies, which is another cause of concern. This can be seen in the official data released by the government, where on multiple occasions, mental illness continues to be underdiagnosed or overlooked.<sup>27</sup> Such a situation becomes significantly worse with regards to providing proper health care and measures to enhance social welfare, since there lack specific guidelines on the same. Article 39-A of the Indian Constitution states that equal opportunities must not be denied to any person by reason of disabilities. There is no definition of ‘disabilities’ in the Article and clearly, the Constitution fails to consider the umbrella of mental, intellectual

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<sup>25</sup> John, *supra* note 18.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

and other forms of disabilities. Additionally, the Constitution does not prohibit discrimination on grounds of disability under Article 15(1). If the Government really wishes to strive for an egalitarian society and achieve growth through millennium development goals, it is imperative that India reformulates its existing laws on disability in consonance with global conventions.

#### 4. INDIAN JUDICIARY'S STANCE ON DISABILITY

The judiciary has the interpretational choice of either furthering the cause of disability rights or endorse the present social perceptions on disability.<sup>28</sup> In order to comprehend the effectiveness of this legislation, it is crucial to delve into case laws to check whether the Indian Courts have been able to secure justice for disabled women. In *Suchita Srivastava v Chandigarh Administration*<sup>29</sup>, the case that arose before the Courts was pertaining to the reproductive rights of a woman with mental retardation' who was pregnant, as a result of rape. The contention arose as the woman wanted to carry the pregnancy to its full term. However, this was resisted by the Chandigarh Administration who subsequently filed a petition before the High Court, stating that the woman was incapable of giving birth and looking after the child. The High Court, ruling in favour of the respondents directed the termination of the pregnancy, despite the fact that it went against her wishes. The Apex Court overruling this HC decision, made a clear distinction between mental illness and mental retardation that even though the Appellant was mentally retarded, she had not consented to the termination. Additionally, it recognized international norms and conventions for persons with disabilities and held that "*Her reproductive choice must be respected, in spite of factors such as the lack of understanding of the act along with the apprehensions about her capacity to carry the pregnancy to its full term, and the assumption of maternal responsibilities thereafter.*"<sup>30</sup> This case is significant as it clearly recognizes the legal right of a woman with mental retardation to take independent decisions as she deems fit.

In another case, the petitioner was a visually impaired student seeking admission in 'Bachelors of Physiotherapy' but was denied the opportunity as the respondents stated, it was not feasible for her. The Court took a progressive approach by allowing the petitioner to provisionally be admitted to the course and further reprimanded the respondents for their negative attitude as they "*have not cared to consider the primary object underlying the provisions of the*

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<sup>28</sup> Dr. Sanjit Kumar Chakraborty, *Disability Rights in India: A Paradigm Shift from 'Object' to 'Subject'*, SSRN (June 15, 2009), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1732128](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1732128).

<sup>29</sup> *Suchita Srivastava & Anr v. Chandigarh Administration* Civil Appeal No. 5845 of 2009

<sup>30</sup> *Id.*

*Disabilities Act 2016*<sup>31</sup>. They further mentioned that “*The stand of the respondent authorities is clearly discriminatory and adversely affects the Right to Life and equal opportunities of the petitioner as also, other such students similar situated*”.<sup>32</sup>

Intriguingly, Justice A.K. Sikri has delivered exceptional verdicts, advocating for equal rights for disabled persons. In *Disability Rights Group v Union of India*<sup>33</sup>, the Supreme Court directed all higher educational institutions to comply with Section 32 of the Rights of the Persons with Disabilities Act 2016 which requires all governmental and ‘other’ higher educational institutions receiving aid from the State, to reserve a minimum of 5% of seats for disabled persons.<sup>34</sup> The reason why this precedent holds undue importance is because the previous Act for Disabled Persons had the requirement to 3% which has now been expanded to 5%.

Furthermore, Sikri J. while referring to Martha Nussbaum, her rights-based model of development and the capabilities approach, pointed out that it is rather essential to provide education to disabled persons to ensure the level-playing field.<sup>35</sup> He further emphasized that education must be imparted in a fruitful manner, which can only be achieved through proper accessibility in these educational institutions.<sup>36</sup> In another verdict, the Court mandated all of the institutions to submit a list to the Chief Commissioner, comprising the number of disabled persons who have been admitted to their institution.<sup>37</sup> It places a mandatory obligation on the Commissioner to enquire about the same.<sup>38</sup> Such a check-balance mechanism devised by the Judiciary is helpful in providing relief to the disabled persons by fulfilling the legal lacunae which continues to remain ambiguous on several aspects.

## 5. THE LEGISLATION AND DISABILITY MODELS

With the objective to change the public perception of handicapped persons, the statute, The Rights of Persons with Disabilities Act was passed in India in 2016. This was done to recognize the global agreement, 'United Nations Convention on the Rights of Persons with Disabilities'. Steps were actively taken in this model to move from the 'charity model of disability,' as 'mere

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<sup>31</sup> Kritika Purohit and Anr. v State of Maharashtra and Ors W.P. No. 979 of 2010

<sup>32</sup> *Id.*

<sup>33</sup> Disabled Right Group and Anr v. Union of India and Ors (2018)

<sup>34</sup> Anusha Reddy et.al., *Paving the Way to an Inclusive India, One Judgment at a Time*, THE WIRE (Jan. 08 Jan 2018), <https://thewire.in/government/ro-postpones-scrutiny-of-nomination-after-congress-complains-aap-candidate-for-rs-polls-holds-office-of-profit>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Rajive Raturi v Union of India W.P. (Civil) No. 243 of 2005

welfare recipients,' to a 'social model of disability,' which, rather than focusing solely on the disability, pays attention to the society's 'social construct'.<sup>39</sup> This is not just limited to physical barriers of the disabled persons but is accompanied with the negative attitude of the society to resort to prejudices and stereotypical behaviour, ultimately, hindering disabled persons from leading a meaningful life.<sup>40</sup> Disability is frequently viewed as a medical issue, implying that disabled people's issues are caused by their impairments. Indian judges have only integrated parts of the social model of disability into the jurisprudence of their rights through these decisions. On the other hand, there exists a premise among scholars that the social model of disability is not applicable in a country like India as the majority of disabled persons have the appropriate skills to be engaged in some form of employment.<sup>41</sup> By making an economic contribution to the household, their dignity in society is enhanced. The social model demonstrates power relations that significantly impact the pattern of disability disadvantage. It affects the survival of the disabled, which now becomes dependent on their income or other resources. Disabled women are rarely able to participate in decision making and their duties are restricted to domestic activities. So, how should these women earn income, if the underlying conditions are never in their favor? It becomes a two-fold battle not just against her own mind and body but also, against the society to prove her worth, due to lack of support from the latter.

Unfortunately, we must not take these abovementioned judgements for granted as they continue to lack proper implementation. In a recent pending judgement, the petitioner has highlighted the fact that there has been no provision made for reservation for persons with disabilities in educational institutions, such as the National Law Universities themselves.<sup>42</sup> Moreover, the extension of reservation from 3 to 5% is only restricted to the public sector. While several judgements have been pro-active in their outlook towards disabled persons, one can only hope that directions given by the Apex Court are executed in a stricter manner. The State continues to be apathetic as the physical environment for the disabled is largely inaccessible, and such information is restricted. Additionally, though the Court has on multiple occasions reinforced the social model of disability but the indifferent attitude of the society can be reflected in the 2001 consensus that excluded roughly 60 million disabled people who have remained outside the purview of the mainstream Indian society.<sup>43</sup>

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<sup>39</sup> Reddy, *supra* note 35.

<sup>40</sup> *Id.*

<sup>41</sup> Mehrotra, *supra* note 2, at 320.

<sup>42</sup> *supra* note 34.

<sup>43</sup> Ghai, *supra* note 1, at 28.

## **6. THE ROAD AHEAD**

There is a dire need to equip disabled persons with accessible educational opportunities in institutions, ensure adequate employment, increase public awareness about the rights and requirements of disabled persons and provide convenient access to facilities. Legal statutory provisions, judicial pronouncements and support from the Constitution merely expound on the indispensable requirement to reinforce human rights for disabled persons, but this alone cannot guarantee integration. Government and NGOs ought to be pressured to adhere to the recommendations made by the UN bodies on women. Prone to abuse, disabled women continue to encounter difficulties in maintaining their household responsibilities, acquire employment, give birth and mingle with the society.

The State has not formulated any concrete policies to address these aforesaid concerns and the precedents established appear as merely 'directory' in nature. There is a fundamental need to recognize that the underlying problem resides in the institutional stereotypes and practices entrenched in the roots of the society. Education, sensitivity process, accessible institutions, vocational training, adaptive technology are some of the ways to address the needs of disabled women. There is an inherent requirement for normalizing differences; physical, mental or intellectual and merge them into the society. Similar to Justice Sikhri's reasoning to have an equal playing field, inclusion of disabled persons through employment and participative support is paramount to bring them into the mainstream.