

Legal Perspectives and Challenges in Addressing Abuse and Violence Against Persons with Disabilities

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The research provides insights into the many abuse types that are common in various disability situations. It also draws attention to the difficulties in reporting and dealing with these abuses, emphasising weaknesses in the legal system and support networks. Additionally the paper aims to conduct a comparative study among various countries with respect to the laws that protect the disabled against abuse and violence. Moreover the paper also aspires to put forward suggestions and policy recommendations to amend the existing legal framework in India.

In conclusion, this paper advocates for a comprehensive strategy that combines legislative reforms, inclusive policies, community-based interventions, and increased awareness campaigns for combatting the abuse against people with disabilities.

This research aims to pave the road towards a more fair and supportive environment for people with disabilities, free from the threat of abuse and violence, by elevating their voices, empowering them, and cultivating an inclusive culture.

Keywords: Disability, Legal frameworks, Comparative study, Sexual abuse, Policy reforms

INTRODUCTION

In the intricate tapestry of human rights and social justice, one disturbing thread persists – the pervasive and often overlooked issue of abuse and violence against disabled persons. This research paper embarks on a comprehensive exploration of the multifaceted challenges faced by individuals with disabilities, aiming to unravel the complex dynamics that perpetuate their vulnerability to various forms of mistreatment. As we stand at the intersection of evolving societal norms and an increased awareness of human rights, it is imperative to scrutinize the dimensions of abuse that persist within this marginalized community.

The World Health Organization estimates that over one billion people, or approximately 15% of the global population, live with some form of disability. Despite progress in recognizing and championing the rights of persons with disabilities, they remain disproportionately exposed to abuse and violence across diverse settings. This research seeks to illuminate the shadows cast upon the lives of disabled individuals, offering a nuanced understanding of the mechanisms that perpetuate their victimization.

The abuse and violence faced by disabled persons manifest in a spectrum of forms, ranging from physical and sexual abuse to psychological and economic

exploitation. Numerous studies suggest that individuals with disabilities are at a significantly higher risk of experiencing violence than their non-disabled counterparts. Yet, the intricacies of these experiences remain understudied and inadequately addressed within mainstream discourse. The roots of abuse against disabled persons are deeply embedded in societal attitudes, systemic neglect, and an inherent lack of understanding of the rights and agency of this population. Stereotypes and misconceptions perpetuate a cycle of discrimination, rendering disabled individuals more susceptible to exploitation. The prevailing societal narrative often confines persons with disabilities to a role of dependence, stripping away their autonomy and agency. Consequently, these individuals find themselves at the mercy of caregivers, institutions, and a society that frequently fails to provide adequate protection.

This research endeavors to dissect these intersections, acknowledging the unique experiences of disabled women, people of color, and those living in poverty, among other marginalized identities. By scrutinizing the root causes, systemic failures, and societal attitudes that perpetuate abuse against disabled persons, this research aims to contribute to the development of more effective interventions, policies, and advocacy initiatives. The overarching goal is to foster a society that not only acknowledges the rights and humanity of disabled individuals but actively works towards dismantling the structures that allow abuse to persist. In doing so, we take a step closer to realizing a world where all individuals, regardless of ability, can live free from the shackles of violence and exploitation.

POPULATION OF DISABLED PERSONS IN INDIA

Population, India 2011			Disabled persons, India 2011		
Persons	Males	Females	Persons	Males	Females
121.08 Cr	62.32 Cr	58.76Cr	2.68 Cr	1.5 Cr	1.18 Cr

(table 1-population of disabled persons in india)³

INTERNATIONAL INSTRUMENTS

The Convention on the Rights of Persons with Disabilities and its Optional Protocol

The Convention on the Rights of Persons with is an international human rights treaty adopted by the United Nations General Assembly on 13 December 2006 and came into force on 3 May 2008. The Convention on the Rights of Persons with Disabilities (CRPD) is indeed a significant international human rights instrument that focuses on protecting and promoting the rights of persons with disabilities.

COMPREHENSIVE SCOPE

Many other types of rights are included under the CRPD, such as social, cultural, economic, political,

and civil rights. It places a strong emphasis on the values of equality, inclusion, and nondiscrimination, acknowledging that people with disabilities have a right to live freely, make their own decisions, and take an active role in society.

SUPERSEDING PREVIOUS DEVELOPMENTS

Compared to earlier international and regional agreements pertaining to the rights of people with disabilities, the CRPD is seen as being more sophisticated. It acts as the main point of reference for discussing the rights of people with disabilities on a worldwide scale.

INNOVATIVE APPROACH

³ report by the Department of empowerment of persons with disabilities ,Ministry of social justice and empowerment government of India

Novel components not included in previous human rights accords are introduced by the CRPD. This covers clauses pertaining to global collaboration, gathering and analysing data, increasing public awareness, and establishing systems for domestic execution and oversight. These characteristics are intended to support mobilisation and effective policies to achieve the rights of people with disabilities.

INTERNATIONAL COOPERATION

The CRPD places a strong emphasis on the value of global collaboration in advancing the rights of people with disabilities. This cooperative strategy acknowledges that tackling disability rights necessitates international cooperation.

MONITORING AND IMPLEMENTATION

The CRPD creates national monitoring and implementation procedures for its provisions. This includes establishing a Committee on the Rights of Persons with Disabilities to supervise the Convention's implementation and imposing reporting requirements on state parties.

In conclusion, the CRPD and its Optional Protocol are essential instruments for furthering the rights of people with disabilities across the world because they offer a framework for global cooperation, enforcement, and protection.

DECLARATION ON THE RIGHTS OF DISABLED PERSONS

The Declaration on the Rights of Disabled Persons is a declaration of the General Assembly of the United Nations, made on 9 December 1975

Declaration on the Rights of Disabled Persons demands that it serve as a framework and common foundation for the preservation of these rights, both nationally and internationally: "Disabled person" refers to any individual who lacks the capacity, either congenital or acquired, to support themselves adequately in terms of their physical or mental needs for a regular existence and/or social interactions. People with disabilities are entitled to protection against discriminatory, abusive, or demeaning behaviour, as well as from all forms of exploitation and

restrictions. When appropriate legal assistance is necessary to safeguard their person and property, disabled people are entitled to get it. If legal action is taken against them, the process followed by the court will properly consider their mental and physical health.

LEGAL FRAME WORK IN INDIA

PROVISIONS UNDER THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

There are various sections in the THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 that aims for the protection of disabled persons from the cruelty and abuse as well as prescribes punishments for the same.

- Protection from cruelty and inhuman treatment.—
(1) The appropriate Government shall take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment. (2) No person with disability shall be a subject of any research without,— (i) his or her free and informed consent obtained through accessible modes, means and formats of communication; and (ii) prior permission of a Committee for Research on Disability constituted in the prescribed manner for the purpose by the appropriate Government in which not less than half of the Members shall themselves be either persons with disabilities or Members of the registered organisation as defined under clause (z) of section 2⁴
- Protection from abuse, violence and exploitation.—(1) The appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent the same, shall— (a) take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents; (b) take steps for avoiding such incidents and prescribe the procedure for its reporting; (c) take steps to rescue, protect and rehabilitate victims of such incidents; and

⁴ section 6 of the rights of persons with disabilities act, 2016

(d) create awareness and make available information among the public.

(2) Any person or registered organisation who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any person with disability, may give information about it to the Executive Magistrate within the local limits of whose jurisdiction such incidents occur.

(3) The Executive Magistrate on receipt of such information, shall take immediate steps to stop or prevent its occurrence, as the case may be, or pass such order as he deems fit for the protection of such person with disability including an order—

(a) to rescue the victim of such act, authorising the police or any organisation working for persons with disabilities to provide for the safe custody or rehabilitation of such person, or both, as the case may be

(b) for providing protective custody to the person with disability, if such person so desires

(c) to provide maintenance to such person with disability.

(4) Any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any person with disability shall inform the aggrieved person of—

(a) his or her right to apply for protection under sub-section (2) and the particulars of the Executive Magistrate having jurisdiction to provide assistance

(b) the particulars of the nearest organisation or institution working for the rehabilitation of persons with disabilities

(c) the right to free legal aid; and

(d) the right to file a complaint under the provisions of this Act or any other law dealing with such offence: Provided that nothing in this section shall be construed in any manner as to relieve the police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

(5) If the Executive Magistrate finds that the alleged act or behaviour constitutes an offence under the

Indian Penal Code (45 of 1860), or under any other law for the time being in force, he may forward the complaint to that effect to the Judicial or Metropolitan Magistrate, as the case may be, having jurisdiction in the matter.⁵

- Punishment for offences of atrocities.— Whoever,— (a) intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view
- (b) assaults or uses force to any person with disability with intent to dishonour him or outrage the modesty of a woman with disability
- (c) having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to him or her
- (d) being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually;
- (e) voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability
- (f) performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.⁷

JUDICIAL DECISIONS ON VIOLENCE AGAINST PEOPLE WITH DISABILITY

Inclusion of Acid Attack Victims in Disability List

In *Laxmi v. Union of India*⁸, in response to a writ case submitted by an acid attack survivor before the 2013 amendments, the Supreme Court made a series of instructions for restriction of sale of acid in India, and for the proper care and rehabilitation of acid attack

⁵ section 7 of the rights of persons with disabilities act, 2016

⁷ section 92 of the rights of persons with disabilities act, 2016

⁸ (2016) 3 S.C.C. 669; 2015 S.C.C. OnLine S.C. 335

victims. The Court ordered all States to incorporate into their Victim Compensation Schemes a minimum payment of three lakh rupees for victims of acid attacks.

The Supreme Court made it clear in *Parivartan Kendra v. Union of India*, that the ruling in *Laxmi's case* did not prevent the Government from compensating victims of acid attacks with sums above three lakh rupees, should that be necessary. Additionally, the Court ordered all States and Union Territories to take the necessary actions to add victims of acid attacks to their lists of disabilities. Following this ruling, victims of acid attacks were included to the RPWD Act's handicap list, granting them access to government assistance programmes and reservation benefits.

JUDICIAL ACTIVISM IN INDIA FOR THE RIGHTS OF DISABLED PERSONS

A bench comprising Justices A. M. Khanwilkar, Dipak Misra, and M. M. Shantanagoudar instructed each district to choose a Special Public Prosecutor to expedite trials involving individuals with disabilities. The supreme court's ruling required all States and Union Territories to submit a report on the requirements of the 2016 Rights of Persons with Disabilities Act. According to the Supreme Court, the new law protected the rights of the disabled in a wide range of situations. People with disabilities have the right to expedited trials according to section 11 of the Criminal Procedure Code, which establishes a special court.

The *Karamjeet Singh v. Union of India*¹⁰ case established a precedent for criminal cases involving individuals with disabilities. It interpreted sections pertaining to general provisions for inquiries and trials as well as when an individual is of unsound mind (specifically, Sections 320(4)(a), 330(2), 335(1)(b) and 339) and declared that, in the event that an individual with a disability is the victim, a writ petition may be filed on their behalf by a third party acting as a "next friend." "If a guardian or next friend initiates proceedings for and on behalf of such a disabled aggrieved party, it is in effect proceedings initiated by the party aggrieved and not by a total stranger," the case ratio established this principle.

¹⁰ AIR1993SC284

The victim in *Tekan v. State of Madhya Pradesh*¹² was a blind individual with physical disabilities. In this instance, the victim received compensation, but the court determined that a lump sum payment was not appropriate because the victim was incapacitated and had no family to care for her. This was because the victim could not handle herself. According to the ratio, she was given Rs. 8,000 a month for the rest of her life rather than a lump sum payment.

THE NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999

The 1999 Act sets up a National Trust to enable persons with disability to live independently by: (i) promoting measures for their protection in case of death of their parents, (ii) evolving procedures for appointment of their guardians and trustees, and (iii) facilitating equal opportunities in society.

The National Trust's vision

An inclusive society that respects individual differences and gives people with disabilities the tools they need to fully participate in society and live independently, with dignity, equality of opportunity, and rights.

The National Trust's Mission

The National Trust seeks to fulfil the rights of Persons with Disabilities and their families, to create opportunities for their capacity development, and to assist and encourage the development of an inclusive society and supportive environment.

OBJECTIVES

To enable and empower persons with disability to live as independently and as fully as possible within and as close to their community as possible; to facilitate the realisation of equal opportunities, protection of rights and full participation of persons with disability; to extend support to its registered organisations to provide need based services; and to evolve procedures for appointments of guardians and trustees for persons with disabilities.

RECOMMENDATIONS AND SUGGESTIONS

¹² AIR 2016 SC 817

To enhance the legal framework in India pertaining to violence against handicapped individuals, it is imperative to fortify current legislation, implement novel policies, and guarantee efficient implementation. The following recommendations are provided to improve the legal framework:

1. Create complete laws with precise definitions, crimes, and punishments that particularly address violence against handicapped people. Verify that a wide variety of forms of violence, such as financial, emotional, sexual, and physical abuse, are covered by the law. To guarantee a comprehensive legal response, include measures pertaining to violence against handicapped people into current criminal and civil laws.
2. Establish heightened punishments for actions committed against handicapped persons, understanding the vulnerability and possible impact on victims. Provide accessible courtrooms, sign language interpreters, and other modifications to make the judicial system accessible to people with disabilities. To ensure knowledge and empathy in handling instances involving violence against handicapped people, establish specialist courts or benches within already-existing courts. Establish fast-track courts to minimize delays in the administration of justice by resolving instances involving violence against handicapped people more quickly.
3. Offer training courses on disability rights, sensitivity, and the particular difficulties experienced by victims with disabilities to judges, attorneys, and law enforcement officials. To guarantee that people with disabilities have access to legal counsel and assistance during court proceedings, strengthen legal aid services.
4. Provide easily navigable and accessible channels for the reporting of violence against individuals with disabilities, while guaranteeing complainants' privacy and safety. Create a reliable system for gathering and examining information on incidences of violence against people with disabilities in order to determine the frequency and characteristics of these occurrences.
5. Start public awareness campaigns to inform people about the rights of people with disabilities, the legal ramifications of violence, and the channels for reporting issues. Work together to guarantee the efficient application of laws, exchange perspectives, and inform legal reforms with non-governmental organizations (NGOs) and disability advocacy groups.

6. Make sure the laws are inclusive and take into account the various requirements of people with various kinds of impairments. Strengthen procedures for the enforcement of laws and ensuring that the police and court system are sufficiently equipped to handle cases involving handicapped victims. To guarantee a rights-based approach, harmonize the legislative framework with international standards, such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

By tackling these issues, India may strive to create a stronger legal system that successfully deters, prosecutes, and punishes acts of violence against people with disabilities, promoting a culture that upholds and defends the rights of all people.