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# **JUDICIAL STANCE ON DOMESTIC VIOLENCE AGAINST DISABLED WOMEN IN INDIA: CRITICAL ANALYSIS**

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## **Abstract**

Domestic violence against women is a serious issue that threatens women's physical and emotional well-being and negatively affects their quality of life. This pattern of abuse is in the form of intimidation, manipulation, humiliation, isolation, fear, terror, coercion, threats, blaming, and injury, which usually occurs between intimate partners and caretakers in the case of those women disabled. Lately, women with disabilities tend to experience violence or abuse with their close ones compared to those without a disability. The author will be stating the intersection between domestic violence and disability by stating that women with disabilities are more prone to such violence because they might need help with daily chores and are dependent physically and mentally vulnerable, which gives them all possibilities to take advantage of the situations. The author will mention various abusive tactics against women with disabilities by intimate partners and caregivers through their children, economic abuse, sexual abuse, fear, low self-esteem, minimizing or denying or blaming her disability etc. The author will further be critically examining and analysing the evolution of judicial responses to domestic violence against disabled women and appreciating the present judicial status. Matrimonial cruelty has now been made a cognizable, non-bailable and non-compoundable offence in India under Section 498A of IPC. The author will suggest various ways to curb the violence faced by disabled women such as all-women police station, family counselling cells, Shelter and short stay homes, helpline number, law enforcement, etc. will be discussed.

**Key words:** abuse, intimate partner, violence, disability.

## Introduction

Domestic violence is defined as conduct by the respondent that assaults or makes the aggrieved person's life miserable through the cruelty of conduct, even if such conduct does not constitute physical ill-treatment, forces the aggrieved person to live a sinful life, or otherwise injures or harms the aggrieved person.<sup>1</sup> Women with disabilities are more vulnerable to every sort of violence than non-disabled women since they are in such a disadvantaged position in the present social matrix. The crisis worsens societal disparities, making women with disabilities even more vulnerable because they are at a particular crossroads of gender and disability. Women with disabilities are more prone to be victims of violence or abuse than women without impairments.<sup>2</sup>

According to particular research, women with disabilities are more likely than women without disabilities to be subjected to violence or abuse by a current or past spouse. Women with serious mental illness are stigmatised for their gender, psychosis, and separation or divorce. It is a lose-lose situation for many women. They are not welcome in either their parents, or spouses; houses.<sup>3</sup> These women are powerless and face a variety of stresses unique to Indian cultures, such as partial desertions, being forced to live with a husband she despises, not being allowed to enter her own home, being sent back to her parents whenever her symptoms worsen, her parents being forced to pay for her medical expenses, not being allowed to take her medication, and so on.<sup>4</sup> Because of social isolation, limited mobility, a lack of support systems, communication obstacles, and unfavourable societal judgments, perpetrators of violence target women and girls with disabilities in particular.<sup>5</sup>

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<sup>1</sup> Meghna Sharma and Niharika Das, 'Invisible Victims' of Violence: A Gender and Disability Perspective of Coronavirus in India, *Economic & Political weekly*, 17<sup>th</sup> April 2021, Vol. 56, Issue No. 16, <https://www.epw.in/engage/article/invisible-victims-violence-gender-and-disability>

<sup>2</sup> Hughes, R.B., Lund, E.M., Gabrielli, J., Powers, L.E., Curry, M.A. (2011). Prevalence of interpersonal violence against community-living adults with disabilities: a literature review. *Rehabilitation Psychology*; 56(4) 302-19.

<sup>3</sup> Brownridge D.A. Partner violence against women with disabilities: Prevalence, risk, and explanations. *Violence Women*. 2006;**12**:805–822.

<sup>4</sup> Martín-Fernández M., Gracia E., Lila M. Psychological intimate partner violence against women in the European Union: A cross-national invariance study. *BMC Public Health*. 2019;**19**:1739.

<sup>5</sup> Smith S.G., Chen J., Basile K.C., Gilbert L.K., Merrick M.T., Patel N., Walling M., Jain A. *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010–2012 State Report*. National Center for Injury Prevention and Control, Centers for Disease Control and Prevention; Atlanta, GA, USA: 2017.

## Domestic violence and disability

Over one billion individuals worldwide have impairments, accounting for roughly 15% of the global population, and disability disproportionately impacts vulnerable communities.<sup>6</sup> The number of disabled girls and women is significant; according to the 2011 World Report on Disability, the female disability prevalence rate is 19.2%, compared to 12 % for males.<sup>7</sup>

According to studies, women with disabilities are sexually attacked at least twice as high as the general female population. In the case of women with cognitive or communication disabilities, their lack of understanding of the situation and inability to say no during a sexual assault might be misinterpreted as consent.<sup>8</sup> Because of their gender, age, and condition, girls with disabilities face prejudice and heightened vulnerability, and girls with intellectual impairments are particularly vulnerable.

It is projected that 40 to 70% of children will be sexually assaulted by reaching 18. Because of insufficient policies and standards, negative attitudes, physical access, information availability, communication, lack of service provision, inadequate funding, and a lack of involvement women with disabilities in decisions that directly affect their lives, the process for reporting violence is often inaccessible for women and girls with disabilities.<sup>9</sup> Isolation, emotional blackmail, rejecting and blaming, blackmailing with children, physical violence and sexual assault are abusive techniques used by intimate partners and caregivers against women with disabilities.<sup>10,11</sup> Many disabled women and girls have minimal or no access to school and do not know formal sign language.

Thus, they communicate primarily using signs that only their immediate family understands. Women with disabilities, like other women, are frequently mistreated by someone

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<sup>6</sup> Barrett, K.A., O'Day, B., Roche, A., Carlson, B.L. (2009). Intimate partner violence, health status, and health care access among women with disabilities. *Women's Health Issues*; 19(2): 94-100.

<sup>7</sup> Sharma I, Pandit B, Pathak A, Sharma R. Hinduism, marriage and mental illness. *Indian J Psychiatry*. 2013;55:S243-9.

<sup>8</sup> Jones, L. et al. July 2012. Prevalence and risk of violence against children with disabilities: Systematic review and meta-analysis of observational studies. *The Lancet*, Early Online Publication.

<sup>9</sup> Iglesias, M. 1998. Violence and women with disability. Vedras, Spain: AIES; The Swedish Research Institute for Disability Policy, HANDUAB. 2007. Men's violence against women with disabilities. Synskadades Riksförbund, The Report Series

<sup>10</sup> Rebecca Vallas, *Nearly Half of All Women in Jail Are Disabled*, *The Nation*, Jul. 19, 2016, <https://www.thenation.com/article/archive/nearly-half-of-all-women-in-jail-are-disabled/>.

<sup>11</sup> The Roeher Institute. 2004. "Violence against Women with Disabilities." Ottawa, Public Health Agency of Canada.

they know, such as a boyfriend or family member. According to the International Centre for Research on Of women (ICRW), 85% of males admit aggressive behaviour towards their wives at least once in the previous 12 months. 57% of males acknowledged abusing their spouses sexually. Men acknowledged abusing their pregnant spouses in 32% of cases. To demonstrate their dominance over the weaker sex, the males used violence. Repeated humiliation, insults, forced isolation, constraints on social mobility, the persistent fear of violence and harm, and denial of economic resources is all subtle and insidious kinds of violence. <sup>11</sup>

Women with disabilities are also in danger of being abused by healthcare professionals or caretakers. Caregivers might refuse to offer drugs or assistance items like wheelchairs or braces to their patients. They might also refuse to assist with daily activities such as bathing, dressing, or eating. Furthermore, persons with impairments are more likely to be socially isolated, have low self-esteem, and lack personal autonomy. These characteristics, frequently cultivated by an abusive relationship, increase the possibility that a person may accept acts as the standard rather than seeing them as abuse. <sup>12</sup>

Difficulty in reporting mistreatment owing to a lack of accessible modes of communication, due to physical impediments and a lack of accessible communication channels, information and counselling services are inaccessible (Women who are blind or visually challenged should be especially concerned about this), fear of reporting the abuse, since it may result in the breaking of relationships and loss of the care they require, and a greater dependency on others for care, Lower self-esteem as a result of not being viewed as a woman, but just as a person with a handicap, or even worse. <sup>12</sup> Reporting sexual and gender-based abuse has a social stigma and the fact that perpetrators are typically family members. The presence of a family member may discourage women from reporting. Furthermore, authorities frequently see a woman with an intellectual handicap as a non-credible witness, and in such cases, the investigation of the crime may be halted.

Because community and family members do not feel they need or can understand this sort of information, women and girls with disabilities have the lowest levels of sexual-reproductive health, furthermore, because of social exclusion from schools. Moreover, in other community centres, girls with disabilities are more likely to be denied access to grades in which

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<sup>12</sup> Ortoleva, S and Lewis, H. 2012. Forgotten Sisters - A Report on Violence Against Women with Disabilities: An Overview of its Nature, Scope, Causes and Consequences

sex education is taught;<sup>13</sup> It is more difficult to discern between proper behaviour and violence/abuse when a stigma is attached to delivering sexual education to women/girls with disabilities.<sup>14</sup>

## Evolution of judicial responses to domestic violence against disabled women

The Indian Convention on the Rights of Persons with Disabilities attempted to address this by establishing a special provision for women with disabilities under Article 6. The Rights of Persons with Disabilities Act of 2016 recognised this intersectional and multifaceted discrimination against women with disabilities by including a particular provision for women with disabilities under Section 4 of the Act, similar to the international convention. However, the law has had little effect on the normative circumstances of disabled women, who continue to face structural discrimination. As a result, laws have failed to recognise the connection between gender and disability. Because the Prevention of Domestic Violence Act of 2005 is aimed at women in general, it does not address the unique needs of disabled women. In its closing comment, the UN Committee on the Rights of Persons with Disabilities noted that India has a limited number of accessible shelters for women with disabilities who are victims of abuse.

In *Patan Jamal Vali v State of Andhra Pradesh*<sup>15</sup>, a two-judge bench led by Justice DY Chandrachud issued a decision in a criminal appeal against the Andhra Pradesh High Court's decision. The case involved the rape of a visually impaired girl from the Scheduled Caste. In this instance, a blind girl from a Scheduled Caste group was raped by a relative of her brothers in her own house. Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and Section 376(1) of the Indian Penal Code were used to punish the defendants.<sup>16</sup>

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<sup>13</sup> Breiding, M.J., Armour, B.S. (2015). The association between disability and intimate partner violence in the United States. *Annals of Epidemiology*; 25(6): 455-457. doi: 10.1016/j.annepidem.2015.03.017.

<sup>14</sup> Kutin J., Russell R., Reid M. Economic abuse between intimate partners in Australia: Prevalence, health status, disability and financial stress. *Aust. N. Z. J. Public Health*. 2017;**41**:269–274.

<sup>15</sup> LL 2021 SC 231

<sup>16</sup> Disabled Women's Network of Canada, "Factsheet: Women with Disabilities and Violence," accessed Jul. 21, 2020, [https://www.dawncanada.net/media/uploads/page\\_data/page-267/english\\_-\\_violence\\_-\\_january\\_2014.pdf](https://www.dawncanada.net/media/uploads/page_data/page-267/english_-_violence_-_january_2014.pdf). <sup>18</sup> Human Rights Watch, "Uganda: For Women with Disabilities, Barriers and Abuse," accessed Jul. 29, 2020. <https://www.hrw.org/news/2010/08/26/uganda-women-disabilities-barriers-and-abuse#>.

Using the circumstances of this case, the court looked into a troubling pattern of sexual assault against women and girls with disabilities and set in motion a thinking process on how the structural realities that have led to this situation may be addressed appropriately. The bench upheld Patan Jamal Vali's life sentence for sexually assaulting a blind girl who was the sister of one of his friends, saying women with disabilities are more vulnerable to sexual violence because the accused believes the rape survivor's testimony will be skewed due to her physical limitations.<sup>18</sup> The court stated that a prosecutrix with a handicap, or a disabled witness for that matter, cannot be regarded as weak or inferior just because they interact with the world differently.<sup>17</sup>

The court established several rules to make the criminal justice system more accessible to disabled people:

- The National Judicial Academy and state judicial academies have been asked to train trial and appellate judges on dealing with cases involving sexual assault survivors.
- The Bar Council of India may explore including these issues and the intersectional nature of violence in general in the LL.B curriculum.
- The National Crimes Record Bureau should carefully consider keeping gender-based violence data that is not aggregated. The disability must be one of the factors on which such data must be preserved to map out the scope of the problem and conduct customised corrective action.
- Police officers should be sensitised regularly to deal appropriately with situations of sexual assault against women with disabilities.

In incidents of gender-based violence, the right of women with disabilities to seek justice is hampered by gender stereotypes and prejudices in the court system (UN Committee on the Rights of Persons with Disabilities 2019).<sup>18</sup> They face various issues, including difficulty escaping violent situations due to mobility issues, communication barriers for women with hearing and speech impairments, and non-consensual sexual acts perpetrated against women

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<sup>17</sup> Hassouneh-Phillips D., McNeff E. "I thought I was less worthy": Low sexual and body esteem and increased vulnerability to intimate partner abuse in women with physical disabilities. *Sex. Disabil.* 2005;**23**:227–240.

<sup>18</sup> Chan J.C., Martin S.L., Moracco K.E., Dulli L., Scandlin D., Loucks-Sorrel M.B., Turner T., Staroneck L., Dorian P.N., Bou-Saada I. Helping Women with Disabilities and Domestic Violence: Strategies, Limitations, and Challenges of Domestic Violence Programs and Services. *J. Women Health.* 2003;**12**:699–708

with psychosocial and intellectual disabilities who may be unaware of the heinous acts of crime perpetrated against them. Physical hurdles to court and police authority, communication difficulties, a lack of police sensitisation, unavailable documents, and a lengthy legal process increase these concerns (Human Rights Watch 2018).<sup>19</sup>

Research performed by Human Rights Watch, which examined case studies of 17 women with disabilities who had experienced sexual abuse, has confirmed this. Even the Ministry of Health and Family Welfare's 2014 guidelines and protocols for medico-legal care for sexual violence victims/survivors acknowledge that women and girls with disabilities face unique challenges in reporting sexual abuse due to communication barriers, reliance on caregivers (often the abuser), or being dismissed as mentally retarded.<sup>20</sup> Women with disabilities are afraid to disclose assault for fear of reprisal from carers, frequently the perpetrators of such violence (UN Committee on the Rights of Persons with Disabilities 2019).<sup>21</sup> Because of the impunity created by the court system, women with disabilities have gone unnoticed.<sup>22</sup>

## Suggestions

The National Network to End Domestic Abuse is a non-profit organisation committed to ending domestic violence. The (NNEDV) National Network to End Domestic Violence is a group of state domestic abuse coalitions, related organisations, and people working together to end domestic violence in the United States.<sup>23</sup> The group collaborates extensively with its members to better understand the needs of domestic abuse victims and services needs and then advocates for these needs with national officials.

Abused Deaf Women's Advocacy Services encourages Deaf and Deaf-Blind survivors of domestic abuse, sexual assault, and harassment to rebuild their lives while changing the attitudes and behaviours that contribute to violence. Individuals and families get

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<sup>19</sup> Lund E.M. Community-based services and interventions for adults with disabilities who have experienced interpersonal violence: A review of the literature. *TraumaViolenceAbus.* 2011;**12**:171–182.

<sup>20</sup> harma I, Tripathi CB. Hindu marriage Act, psychotic illness and women: The Indian paradox. In: Sharma I, Tripathi MN, editors. Varanasi (India): Mahaveer Press; 2009. pp. 317–26

<sup>21</sup> Janine Benedet and Isabel Grant. 2007. "Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Consent, Capacity, and Mistaken Belief." *McGill Law Journal* (52 McGill L.J. 243)

<sup>22</sup> The Roeher Institute. 2004. "Violence against Women with Disabilities." Ottawa, Public Health Agency of Canada

<sup>23</sup> The Roeher Institute. 2004. "Violence against Women with Disabilities." Ottawa, Public Health Agency of Canada

comprehensive assistance and community education, and advocacy on system and policy issues.<sup>24</sup>

The National Centre for Victims of Crime runs this programme. The National Centre campaigns for greater rights, protections, and services for crime victims via a partnership with local, state, and federal partners; offers education, training, and assessment; and acts as a trustworthy source of current information on victim's concerns.

The National Rape, Abuse, and Incest Network RAINN is the nation's largest anti-sexual assault organisation, with a 24-hour hotline operating seven days a week. In addition, the group organises initiatives to prevent sexual assault, aid survivors, and guarantee that perpetrators are prosecuted.<sup>25</sup> RAINN connects survivors of rape, abuse, and sexual assault with resources across the country.

## Conclusion

Women with disabilities are more vulnerable to every sort of violence than non-disabled women since they are in such a disadvantaged position in the present social matrix. The crisis worsens societal disparities, making women with disabilities even more vulnerable because they are at a particular crossroads of gender and disability.<sup>26</sup> Intimate partner violence is a public health issue that influences women's health and the increasing use of health care services. It is impossible to stress the urgency of combating abuse against women and girls with disabilities. The consequences of this violence are broad, and the financial and social costs of violence against women and girls are significant, preventing women and girls from reaching their full potential as members of society. The current global epidemic of COVID19 is unlike any prior calamity. It presents the government with new and unique issues, necessitating special measures to address them. As a result, an intersectional approach is necessary, which recognises that people do not experience abuse and violence in a homogeneous group. Women with disabilities are disproportionately affected when the country is confronting an

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<sup>24</sup> World Health Organization . *Violence: A public health priority. WHO Global Consultation on Violence and Health.* World Health Organization; Geneva, Switzerland: 1996

<sup>25</sup> Washington (USA): ICRW; 2001. The International Centre for Research on Women. Domestic Violence in India II: Exploring Strategies, Promising Dialogue. ICRW Information Bulletin; pp. 1–8.

<sup>26</sup> Human Rights Watch. 2010. "As if we weren't human: discrimination and violence against women with disabilities in northern Uganda." New York: Human Rights Watch.

unprecedented catastrophe like COVID-19. As a result, approaching such a crisis and its ramifications from an intersectional perspective is crucial. This allows for a full assessment of the intricate interconnections that a society experiences during an emergency. In ordinary situations where an emergency or tragedy does not disrupt law and order, women with disabilities face difficulties unique to their disability, which the system consistently fails to solve.<sup>27</sup> Article 15 of the Indian Constitution and international conventions such as the Elimination of All Forms of Discrimination Against Women (CEDAW), which India has ratified, acknowledged women's unequal position and created particular provisions to remedy it. Dowry Prohibition Act (DPA), Sections 498A, 304B, Protection of Women Against Domestic Violence, especially within the institution of marriage and family. Domestic abuse victims; apprehension about going to the police for such offences gradually dissipates. Domestic abuse was frequently seen as a family concern rather than a serious crime, undermining women's rights as citizens. However, the current tendency is shifting. Domestic abuse victims; apprehension about going to the police for such offences gradually dissipates. Domestic abuse was frequently seen as a family concern rather than a serious crime, undermining women's rights as citizens. However, the current tendency is shifting.

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<sup>27</sup> Sharma I, Pandit B, Pathak A, Sharma R. Hinduism, marriage and mental illness. *Indian J Psychiatry*. 2013;55:S243-9