
MISSING CASE OF WOMEN WITH DISABILITY AND DOMESTIC VIOLENCE

Ms Shruti Dahiya, Research Scholar, Department of Laws, Panjab University, Chandigarh

ABSTRACT

Domestic violence or Intimate Partner Violence is a phenomenon known to everyone but accepted by a few. Since time immemorial, women have been subjected to various kinds of abuses ranging from physical, sexual, psychological and economical but it's only in late nineties that it has been recognised worldwide as an offence against marriage and a criminal act done by someone having fiduciary relationship. It came as a bolt to social institution of marriage in India due to its nature of being considered as a sacrament or holy union dictated in the holy texts. Though the International conventions and legislations have tried to curb the menace of harm or abuse to women in her household or shared space but it has not done sufficient to address the needs of People with disabilities. In India, the Prevention of Domestic Violence Act, 2005 was introduced to provide safeguard to the rights of women who are victim of abuse by laying down detailed procedure of complaints, protection orders, and compensation orders etc. but to author's surprise it nowhere specifically mentions anything concerning specially abled women. It's not something that can be addressed generally because due to their disabilities such women are more vulnerable and prone to violence. With this paper, the researcher would like to reflect upon missing case of Women with disabilities in PDVA, 2005.

INTRODUCTION

Domestic violence or Intimate Partner Violence is a phenomenon known to everyone but acknowledged and accepted by a few. Since time immemorial, women have been subjected to various kinds of abuses ranging from physical, sexual, psychological and economical but it's only in late nineties that it has been recognised worldwide as an offence against marriage and a criminal act done by a partner in a fiduciary relationship. It came as a bolt to social institution of marriage especially in India due to its nature of being considered as a sacrament or holy union as also dictated in the holy texts. The projection of women as "DharamPatni" or "Ardhangini" has not actually brought a great change in their status as imagined or preached by great scholars. Even the idea of single identity of husband and wife has been reason of peril of individual identity of woman. In the garb of collective or consensual decision, voice of women at home has always been suppressed which in turn germinates the dominance of man and submission of women and this submissiveness of women often results in the incidents of harassment- physical, sexual, mental; abuse-physical and emotional etc. The very idea of "domestic" space is home, a place supposed to be safe haven, a place where one finds security, comfort and love however sometimes it witnesses the gruesome incidents of violence against the one who is known to be caretaker and epitome of patience and love i.e. women. The very idea of home got blur in scenarios like these and it is quite evident from the data collected i.e. between January and May in 2021, stating that over 2,300 domestic violence complaints were filed with the National Commission for Women, the highest for any year since 2000 and according to National Family Health Survey-5 data, 70% of women in the major States had faced physical violence and did not inform anyone about it.¹

The present statistics of domestic violence complaints received by the authorities give chilling to everyone showcasing the deplorable condition of women at home but what is more horrifying is it being sketchy and partial. Yes the unreported and unconsidered cases of intimate partner violence against women with disability represent the other half of population who need assistance and protection but unfortunately laws and policies are found to be unsatisfactory. It is submitted by Women with disabilities-India network in alternate report that "women with disabilities in India have very little access to the *entitlements*, despite a plethora of programmes and schemes geared towards women's empowerment and social protection as there is *little or*

¹ Domestic violence complaints received in past five months reach a 21-year high, The Hindu (November 27, 2021)<https://www.thehindu.com/data/data-domestic-violence-complaints-received-in-past-five-months-reach-a-21-year-high/article34877182.ece>.

no budgetary allocation made for them. There are few general gender based policies and laws that mainstream rights of women with disabilities in India. The main drawback is with respect to less and disaggregated data to confirm that policies have been implemented for women with disabilities in the areas of education, health, work and employment”²All these issues make it mandatory for us to consider the missing case of women with disabilities in domestic and public space and to revisit the penal and civil laws enforced for them to ensure their protection, safety and dignity. The researcher shall try to achieve desired objective with help of Doctrinal method and by relying mostly on reports, laws and secondary sources such as articles etc. The research design shall be descriptive to understand and describe the problem as it exists and analytical to understand the relationship between reason and outcomes as to why we have been unsuccessful in protecting women with special abilities in India despite of having implemented a special legislation and policies.

MISSING CASE OF INTIMATE PARTNER VIOLENCE - WOMEN WITH DISABILITY

Historically, intimate partner violence was viewed as a segment of domestic abuse and an act for which husband was never held accountable or liable considering patriarchal setup of families. The abuse at the hands of partner comprising of forceful sexual intercourse, wife battering, emotional or psychological abuse went mostly unreported due to intimate nature of family relationships. It was only during 1970s when woman of letters and activists called for an attention towards the need for highlighting and politicising violence against women and recognising the element of gender in such abuse by calling it as “domestic violence”. Domestic violence or intimate partner violence was then recognised as “a pattern of behaviour in relationship used to gain power and control over an intimate partner by causing physical, sexual, emotional, economic or psychological abuse. It also comprises of any act that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone”.³ Later the severity of problem got acknowledged and in 1995 finally, the Beijing Declaration and Platform for Action called for the elimination of violence against women.⁴ A decade later, in 2015, the UN adopted the 2030 Agenda for Sustainable Development which included a global

² Alternate Report towards Article 6 UNCPRD, Women with Disabilities India Network-India(July 25, 2019)https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/Ind/INT_CRPD_CSS_Ind_35606_E.docx.

³ What Is Domestic Abuse?, <https://www.un.org/en/coronavirus/what-is-domestic-abuse>.

⁴ Shoba Suri, *Domestic Violence and Women's Health in India: Insights from NFHS-4*, Observer Research Foundation (January 2022). https://www.orfonline.org/research/domestic-violence-and-womens-health-in-india-insights-from-nfhs-4/#_edn2.

target to eliminate “all forms of violence against women and girls in public and private spheres.”⁵In India too, domestic violence was made punishable as an offence with amendment in criminal law by introduction of Section 498A in 1983. Though it made cruelty subjected to married women an offence by including every sort of physical or mental harm caused to the body or health of the woman and acts of harassment with a view to coerce her or her relations to meet any unlawful demand for any property or valuable security but nowhere it represented the case of disabled women. The idea of disability increasing her vulnerability was unknown then and still not given due attention.

Globally as well as in India, women and girls with disabilities are at higher risk of experiencing abuse or violence and it has also been suggested that they are two to three times more likely to face violence and abuse at home and may find it harder to report abuse or escape the situation. This situation got worse in a lockdown and to highlight its intensity, Domestic violence has been named as the ‘shadow pandemic’ by UN Women globally.⁶ Their disabilities such as locomotor disability had made them more vulnerable and helpless to evade from threatening situations; hearing impairment, deafness or speech disability made it difficult for them to ask for help or to communicate their suffering and intellectual disabilities have proved to be great barriers in establishing crimes or even in providing them justice or legal aid. “Women with disabilities are excluded within exclusion as the discrimination they face intersects on two vulnerabilities of gender and disability and this discrimination determines their position in the social hierarchy, where they are categorised as unwanted and unproductive human resources”.⁷Majority of people have natural interpretation of women with disabilities for being physically and mentally weak and this assumption overlooks the other social, cultural, and political aspects that put women with disabilities in a subordinate position. As a result of this, they are often isolated, neglected and become more prone to violence.⁸This bigotry got worse when disability factor got intersected with gender and the term “invisible women” can be aptly used to describe such women who exist in society but were not treated equally as other members. The vulnerability, risk factor, duration and intensity of violence against women with disability got exaggerated due to their social exclusion and seclusion, their dependence on

⁵ “Sustainable development goals” Transforming our world: the 2030 Agenda for Sustainable Development General Assembly, <https://sdgs.un.org/2030agenda>.

⁶ *Neglected and Forgotten*, Rising Flame and Sightsavers (July 14, 2020) https://risingflame.org/wp-content/uploads/2020/07/NeglectedAndForgotten_RFandSS.pdf.

⁷ Meghna Sharma & Niharika Das, *Invisible Victims' of Violence: A Gender and Disability Perspective of Coronavirus in India*, Economic and political weekly (Apr 17, 2021)

<https://www.epw.in/engage/article/invisible-victims-violence-gender-and-disability>.

⁸ *Id.*

partners or care-takers for daily chores and their economical dependence makes them incapable to take any step.

The issue of difficulties faced by women with disability in reporting abuse is also addressed in report issued by India's Ministry of Health and Family Welfare. The 2014 Guidelines and Protocols for Medico-Legal Care for Victims/Survivors of Sexual Violence stated that "obvious barriers to communication, as well as their dependency on caretakers who may also be abusers are one of many reasons. When they do report, their complaints are not taken seriously and the challenges they face in expressing themselves in a system that does not create an enabling environment to allow for such expression, complicates matters further."⁹

ISSUE OF UNDER-REPORTING AND SKETCHY DATA ON INTIMATE PARTNER VIOLENCE AGAINST WOMEN WITH DISABILITY IN INDIA

One of the many reasons for women with disability being missing from the mainstream society is due to unavailability of data with respect to them. "India has a dearth of population based studies on sexual violence, especially those focused on women and girls with disabilities and estimates of the size of the population with disabilities differ greatly. India's Census 2011 reports that 2.21 percent of India's population or 26.8 million people live with disabilities and out of this women and girls with disabilities constitutes 44% of total population."¹⁰ However the numbers dictating their issues are often incomplete, outdated and faulty. The official statistics too doesn't paint true picture and thus women with disabilities remain highly under-represented. This marginalisation can be attributed to various reasons such as families feeling hesitant in introducing such women to society, their own inferiorities and fear of being ridiculed and disrespected, little or no knowledge of their right of representation, officials conducting surveys being unaware of how to communicate to them etc. makes them go unrecognised in surveys and census. This issue of insufficient data has been specifically addressed under Article 31(1) in the Convention on Rights of Persons with disabilities and it states that the State parties shall take stringent actions for collection of data and statistics so that effective policies can be framed to give effect to provisions of convention.¹¹ It further lay down under Article 31(2) that data should be disaggregated so that it could be easy to recognise and address the barriers faced

⁹ Guidelines and protocols medico legal care for survivors victims of sexual violence, Ministry of Health and Family Welfare, (2014) <https://main.mohfw.gov.in/reports/guidelines-and-protocols-medico-legal-care-survivors-victims-sexual-violence>.

¹⁰ Disabled Population, 2011 https://censusindia.gov.in/Census_And_You/disabled_population.aspx.

¹¹ The Convention on the Rights of Persons with Disabilities, 2006, A/RES/61/106, United Nations.

by persons with disabilities in exercising their rights.¹² Later recognising the severity of issue the United Nations has listed it as one of the Sustainable Development Goal under title “Strengthening the means of implementation and revitalize the global partnership for sustainable development” and it stated that “ By 2020, enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.”¹³ The Committee on the Rights of Persons with Disabilities too in its Report on 22nd session conducted in September 2019 recommended¹⁴ that “to identify and prevent violence against persons with disabilities, certain measures and strategies should be prepared and implemented to recognize incidents of gender based violence against women with disabilities and organisations like National Crime Records Bureau shall ensure to collect data categorized on basis of sex, age, place of residence, relationship with abuser and type of disability in cases of violence and exploitation against women with disabilities and intimate partner violence.”

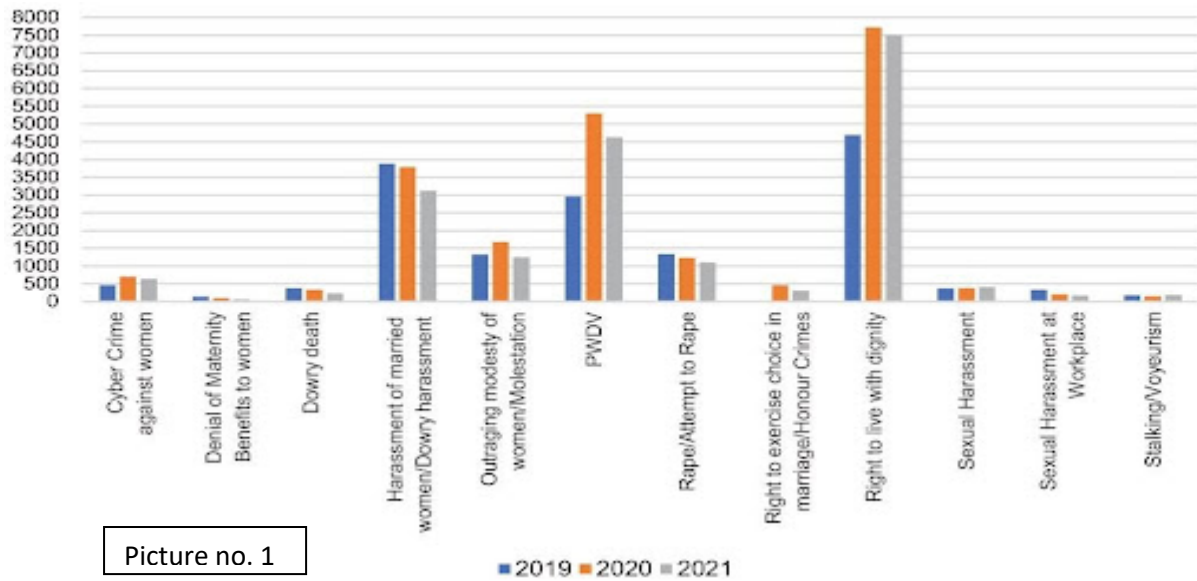
However it brings great disappointment in stating that even now the data compiled by the National Commission of women doesn't include any specific numbers concerning violence committed against women with disability. One can find in picture no. 1 that there are different heads according to nature of crime and complaints received accordingly but not single one emphasising the disabled women and crimes committed against them.¹⁵ One should ask how this data is actually going to help in framing policies specifically for the ones who are at higher risk and how are we suppose to reach them and aid in accessing the justice ?

¹² The Convention on the Rights of Persons with Disabilities, 2006, A/RES/61/106, United Nations.

¹³ United Nations, *Supra* note 5 at 3.

¹⁴ Report of the Committee on the Rights of Persons with Disabilities on its twenty-second session (26 August to 20 September 2019), 12 November 2019, file:///C:/Users/hp/Downloads/CRPD_C_22_2-EN.pdf.

¹⁵ Nature-Wise Report of the Complaints Received by NCW in the Year, 2020
<http://ncwapps.nic.in/frmReportNature.aspx?Year=2020>.



Picture no. 1

Even the National Crime Records Bureau, responsible for accumulating and synthesising data with respect to crime remains unsuccessful in stipulating data on women with disabilities and crimes committed against them in its reports.¹⁶ It is high time that disability should be considered as major factor in increasing incidents of crime against women and recognising its severity, a separate head should be prepared to identify actual victims. The National Human Rights Commission in its Advisory on Rights of Persons with Disabilities in the context of pandemic also stressed upon the significance of data concerning violence or abuse on disabled people and specifically reiterated that “National Crime Records Bureau must include data on Persons with Disabilities”.¹⁷The report submitted by National Coalition towards CRPD (Committee on Rights of Persons with Disabilities) in 2019 while mentioning that women with disabilities are more prone and tend to experience domestic violence and intimate partner violence at twice the rate of other women also observed in its concluding remarks that due to failure and discrepancies in data across all levels of governance in different sectors has caused difficulty in scheming, enforcing, implementing and regulating programmes.¹⁸ This failure shows that there is a sheer lack of knowledge about the concerns of women with disabilities at an institutional level.

¹⁶ IPC Crimes against Women (Crime Head-wise & States/UT-wise) - 2020
https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/TABLE%203A.2.pdf

¹⁷ National Human Rights Commission, September 28, 2020
https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20on%20Disability_0.pdf

¹⁸ CRPD Alternate Report for India, 11 February, 2019
<http://accessability.co.in/wpcontent/uploads/2019/02/CRPD-Alternate-Report-for-India-1.pdf>

CONCEPTUAL UNDERSTANDING OF DISABILITY AND VULNERABILITY

A number of theories have been laid down to propose that disability is a major factor in increased vulnerability of women to violence, suppression and oppression in domestic and public space. The first and foremost theory that justify the above mentioned statement is provided by Prof. Kimberlé Crenshaw in 1989 to describe how race, class, gender, and other individual characteristics “intersect” with one another and overlap to cause greater outcomes. She has explained that intersectionality or intersectional feminism is a prism to see the way in which various forms of inequality often operate together and exacerbate each other”.¹⁹she further mentions that while we have started talking about race inequality as separate phenomenon from inequality based on gender, class, sexual orientation or immigrant status, a lot goes undetected specially people who are subjected to all sort of these inequalities and their experience is not just the sum of its parts.²⁰ On the similar line the researcher asserts that the disability coupled with women, already marginalised section of society causes great disadvantages and if that woman is uneducated and belonged to marginalised section such as scheduled caste or backward class or poor class in India then one can only imagine their ordeal. However, to understand why women with disabilities are more prone and vulnerable, violence and disability shall always be considered as interdependent and interconnected. The social identities of gender and ability as constructed and framed by people according to their age old beliefs of patriarchy and superiority cause immense harm to status and well being of special abled women.²¹ The proposed ecological model explains that to understand violence against women with disabilities it is equally significant to identify environmental and cultural factors which impact prevalence, type and severity of violence against women with disabilities such as intersection of patriarchy and a perspectives resulting in marginalization of women with disabilities, discrimination in health systems, and exclusion from economic opportunities.²² To understand the plight of these missing cases of women, these conceptual frameworks are must to look into the complex intersections and pathways between disability and violence.

The other theory i.e. feminist disability purports that intimate partner violence and social subjugation are result of interplay of gender and disability. Moreover disability is not just

¹⁹Jane Coaston, *The intersectionality wars*, The Highlight by vox (May 28, 2019)

<https://www.vox.com/the-highlight/2019/5/20/18542843/intersectionality-conservatism-law-race-gender-discrimination>.

²⁰ *Id.*

²¹ Sarah R. Meyer “et al.”, *A scoping review of measurement of violence against women and disability*, (Jan. 31, 2022) <https://doi.org/10.1371/journal.pone.0263020>.

²² *Id.*

physical or mental impairment; it is a social construct with underlying beliefs of patriarchal norms and practices affecting women's life and their access to full participation in society. It emphasises that while a specific research methodology may focus on measuring violence and assessing disability at the individual-level, both disability and violence are embedded in social institutions, practices and norms that drive use of violence against women with disabilities and to target it, we need to adopt correctional measures.²³ The disability theory alone stands in consonance to social theory of disability and stays silent on implications of gender in life of women with disability. This male centric view restricts the understanding of problems caused by other dimensions such as gender and only after studying interplay between varying forms of oppression it could be possible to have proper insight into the way women with a disability experience domestic violence and consequences of marginalisation.²⁴ It is pertinent to mention that women with disability have always been at considerable risk of savagery at hands of their intimate partner or caretakers or guardians in comparison to people without disability due to their social, historical and economical based situation of suppression and oppression. The feminist disability theory could also help in effective policy making because other research and policy responses focus mainly on individual causations and suggests rehabilitation and counselling for women or perpetrators. However to address other broader systemic issues causing impact on women with a disability in a violent relationship, such as the lack of adequate income support or limited access to affordable housing can only be addressed with this theory. The material feminism and disability theory have proved to be useful tools for interpreting individual experiences and to link broader societal conditions and arrangements. The political implication of combining these two would help in liberation of women with a disability and in securing social, material, economic and political means for attaining an adequate standard of living and quality of life.

LEGAL AND CONSTITUTIONAL PROTECTION FOR WOMEN WITH DISABILITY IN INDIA

In independent India the only step taken for welfare of disable people was the establishment of National Council for Handicapped Welfare, responsible for framing policies concerning their

²³ Jennifer M. Mays, *Feminist disability theory: domestic violence against women with a disability*, *Disability & Society* (21:2, 2006), DOI: 10.1080/09687590500498077.

²⁴ *Id.* at 151

development and protection.²⁵ However at this time disability was considered as medical issue and sort of disease, an outcome of bio-medical model in which hospitals and health centres played important role for curing or correcting such disability. It actually made difficult for people themselves and activists in establishing the cause and multifarious problems faced by disabled people especially women with disabilities. The major shift came after India signed the Proclamation of Equality and Full Participation of People with Disabilities in Asian and Pacific Region and enacted “The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995”.²⁶ However it was just a step to fulfil international obligation and not much effort has been made to understand the plight of disabled person i.e. social exclusion and non-participation and interplay of gender in increased vulnerability, only provisions to prohibit non-discrimination has been included and nothing about exploitation, abuse or violence or women being more prone to offences in private or public space. It did not follow gender based approach and no specific attention has been made to issue of “Missing Women with disabilities and their woes”.

With the enactment of Protection of Women from Domestic Violence Act, 2005 it was anticipated that the miseries of women with disabilities shall be addressed as it enlarged the meaning of domestic violence in India but to a great disappointment it didn't recognise disabled women as a significant class of people who need special measures. Though the act provides elaborative definition as to what constitutes “domestic violence”²⁷ but it nowhere mentions the acts that fall under category of abuse for disabled women. Explanation I provides that “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person” but what about not providing wheelchair, denying assistance, removing assistive devices or refusing essential medicines to a disabled women knowing that these could cause permanent damage or temporary damage or even death of person?²⁸ Are these not acts of violence or abuse? The provisions of the act failed to recognise severity, immensity of violence carried out against women with disability. The only comprehensive legislation on domestic violence did not have adequate provisions to address the issue such as procedure is provided to report

²⁵ Nilik Mehrotra, *Disability Rights Movements in India: Politics and Practice*, Economic and Political Weekly(2011),https://www.researchgate.net/publication/225273980_Disability_Rights_Movements_in_India_Politics_and_Practice.

²⁶ The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, No.1, 1996.

²⁷ The Protection of Women from Domestic Violence Act, 2005, No. 43, 2005.

²⁸ *Id.* Section 3

incident to Protection officer, service provider or magistrate but what about a women who doesn't know how to speak or write or has intellectual disability? Without special assistance it is almost impossible for women and girls with disabilities to report the incident of violence because of inadequate policies and standards, negative attitudes, physical access, information availability, communication, lack of service provision, inadequate funding, and lack of involving women with disabilities in decisions that directly affect their lives. Further women with intellectual disability are not seen as credible witness and in that scenario police officials seem reluctant in proceeding with investigation. The National Policy for Persons with Disabilities, 2006 addressed the issue of vulnerability of women with disabilities to exploitation and abuse by stating that "women with disabilities require protection against exploitation and abuse and special education, employment programmes and other rehabilitation services should be provided considering their special needs."²⁹ Though it touched the larger issue but stayed silent on suggesting strict measures to prevent such women from domestic violence and no specific definition of violence or other measures were listed.

The major breakthrough in the lives of persons with disabilities came in 2007 when India signed the United Nations Convention on the Rights of Person with Disabilities (UNCRPD), which "proclaims that disability results from an interaction of impairments with attitudinal and environmental barriers which hinders full and active participation in society on an equal basis".³⁰ It marked a shift in viewing disability as a medical problem to a societal problem and that people with disabilities are no longer need to be fixed, instead, the society needs to be changed to adapt to their needs. It has been crafted with the object of altering perception and attitude of society worldwide towards persons with disabilities and to ensure that they should not be viewed as "object" of pity, medical help and someone who needs social protection and assistance rather they are "subjects" with rights. Though born with disability or sometimes acquired later but they are also human beings and thus have all right to live their life like other persons, equally entitled to enforce their inalienable human rights and legal rights provided by States and are capable of taking decisions for their lives on basis of free and informed will.³¹ Article 6 of the convention precisely mentions about "women with disabilities" and states that the signatory parties should acknowledge that women and girls with disabilities are susceptible

²⁹ National Policy for Persons with Disabilities, No.3-1/1993-DD.III.

<http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/National%20Policy.pdf>.

³⁰ The Convention on the Rights of Persons with Disabilities, 2006, A/RES/61/106.

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

³¹ *Id.*

and prone to numerous discrimination and thus certain measures should be implemented to achieve their full participation and equal enjoyment all human rights and fundamental freedoms. It further advises that a course of action should be prepared to guarantee their protection, full development, improvement and empowerment so that they can live their lives to the fullest.³² Article 16 of convention recognising the role played by intersectionality of certain factors specifically mentions that gender based aspect of violence or abuse committed against person with disability inside and outside home must be considered and adequate legislative, social, administrative and educational measures shall be taken to combat such exploitation. The underlying intention here is to showcase the heightened vulnerability of women with disabilities in intimate partner violence or domestic violence. It also addresses the distinctiveness of situation where women and child with disabilities is victim of exploitation or violence and therefore advises States to implement specific and effective legislation to make sure that such incidents of abuse and violence shall be identified, investigated and addressed well.³³ It is pertinent to mention that when victim is a person with disability similar line of investigation or examination as used with other persons can't be exercised due to their disabilities which might be related to hearing, speaking or intellectual and therefore specially designed mechanism should be put to use.

To fulfil commitment and to give effect to principles of convention, the Rights of Persons with Disabilities Act, 2016 was enacted and it significantly transformed the legal scenario. For the first time absolute emphasis has been given in enforcing rights guaranteed to persons with disabilities such as right to equality, opportunity, safety and integrity, individual autonomy, respect for difference and right to be accepted as part of human diversity, right to own property and reproductive rights among others.³⁴ It established that principle of equality enshrined in Article 14 of Indian Constitution stand firm for people with disabilities too and that no person with disability shall be discriminated on basis of his or her disability and that steps shall be taken to ensure their enjoyment of right to equality, life with dignity and respect for his or her integrity equally with others.³⁵ In *Vikash Kumar vs. UPSC & Ors.*, the Supreme Court has explained the object and aim of act by stating that it provides an inclusive definition of "persons with disability" to mark a shift from a stigmatizing medical model of disability under the 1995 Act to a social model of disability which recognizes that it is the societal and physical constraint

³²The Convention on the Rights of Persons with Disabilities, 2006, A/RES/61/106, Article 6(2).

³³ The Convention on the Rights of Persons with Disabilities, 2006, A/RES/61/106, Article 16(5).

³⁴ The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016.

³⁵ The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016, Section 3(1) & 3(3).

that are at the heart of exclusion of persons with disabilities from full and effective participation in society and it seeks to provide the disabled a sense of comfort and empowerment in their difference.³⁶ It has been enforced with an aim to provide them an even platform to thrive, to flourish and offer their unique contribution to the world. It is based on the simple idea with profound implications that each of us has: unique powers to share with the world and make it interesting and richer. By opening doors for them and attenuating the barriers thwarting the realization of their full potential, it seeks to ensure that they are no longer treated as second class citizens.³⁷

To address the crucial issue of violence against women with disabilities and to recognise the gender based violence, a specific provision with the title “women and child with disability” is incorporated under Section 4(1) but it just mentions that appropriate measures shall be taken by the appropriate Government and the local authorities to ensure that the women and children with disabilities enjoy their rights equally with others.³⁸ It seems shallow because on the ground it has proved nothing more than a statement made in paper. The violence perpetrated against women with disabilities is nothing short of heinous crime and mere advisory to State governments won't help in combating these acts of abuse. It can only achieve the desired objective when for the beginning definition of abuse or violence committed against person with disability is provided covering even emotional and psychological abuse. In *Patan Jamal Vali vs. State of Andhra Pradesh*³⁹, the Supreme Court addresses the intersectionality issue and observed that when the identity of a woman intersects with, inter alia, her caste, class, religion, disability and sexual orientation, she may face violence and discrimination due to two or more grounds and in such a situation, it becomes imperative to use an intersectional lens to evaluate how multiple sources of oppression operate cumulatively to produce a specific experience of subordination or violence. It also addresses that there is great need to highlight the increased vulnerability of women with disabilities because of their reliance on others which makes them more susceptible of being at the receiving end of sexual violence. As the facts of this case make painfully clear, women with disabilities, who inhabit a world designed for the able-bodied, are often perceived as "soft targets" and "easy victims" for the commission of sexual violence. It is for this reason that our legal response to such violence, in the instant case as well as at a

³⁶ *Vikash Kumar vs. UPSC & Ors* Civil Appeal No. 273 of 2021.

³⁷ *Id.* at 38

³⁸ The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016.

³⁹ *Patan Jamal Vali vs. State of Andhra Pradesh*, Criminal Appeal No. 452 of 2021.

systemic level, must exhibit attentiveness to this salient fact.⁴⁰ To tackle the menace of violence or abuse, Section 7 titled “Protection from abuse, violence and exploitation” is incorporated to provide that necessary measures shall be undertaken by the concerned Government to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent them the cognizance of incidents of such abuse, violence shall be taken on urgent basis and legal remedies shall be provided.⁴¹ However being a general provision it didn’t prove successful in acknowledging the women’s vulnerability to violence. Moreover it does not expressly refer to violence within the home, the remedies prescribed imply that the private sphere is covered, as an Executive Magistrate can pass a protection order, maintenance order, or an order to stop or prevent the abuse, and no procedure to implement these provisions has been provided in the Central Right of persons with disabilities rules, 2017 or any Action Plan to prevent violence against women with disabilities.⁴²

The act further reflects upon the reproductive rights of persons with disabilities under Section 10 and states that suitable information with respect to reproductive and family planning should be provided to them and that without their free and informed consent no medical procedure which leads to infertility shall be performed upon them.⁴³ This provision no doubt falls in consonance with one of the principle of Convention on the Rights of Persons with Disabilities but in reality fails to address the horrific acts of forced sterilisation performed on women and girls with disabilities. It did not mention it as crime and even Section 92 providing for punishment for offences of atrocities only establishes that performance of any medical procedure on women with disability without her express consent that leads to “termination of pregnancy” would be punished as an offence and it again brings us to square one, where other forms of abuse and violence have been gone unpunished. In *Suchita Srivastava & Anr vs Chandigarh Administration*⁴⁴, the Supreme Court held that considering the victim has mild mental retardation, it is reasonable to use “best interest” test to determine the course of action that would serve the best interests of the concerned person and that a careful inquiry of the medical opinion must be undertaken on the feasibility of the pregnancy as well as social circumstances faced by the victim. The court stresses that the decision shall only be guided by the interests of the victim alone and not those of other stakeholders such as guardians or society

⁴⁰ *Id.* at 28

⁴¹ The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016.

⁴² Swagata Raha & Shampa Sengupta, *Rights of women with disabilities under Indian Legislations*, Manupatra (2018), <http://docs.manupatra.in/newslines/articles/Upload/7102F404-0902-4EEC-BA55-F8EFC25DA6D4.pdf>.

⁴³ The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016

⁴⁴ *Suchita Srivastava & Anr vs Chandigarh Administration*, Civil Appeal no.5845 of 2009 (India).

in general. It was also observed that forced sterilisation for whatsoever reason infringes the right of equality and right to life of person enshrined under Article 14 and Article 21 of Indian Constitution respectively.

CONCLUSION

Though we have come far but still a long and tedious path of progress concerning protection and enforcement of rights of women with disabilities against violence still needs to be travelled. The present legislations are not sufficient as there are huge gaps in their implementation and criminal laws need to be modified to address women with disabilities. However to achieve desired objective, accessibility to legal system needs to be improved and it can only become possible with amendments in reporting mechanism and by sensitising police officials so that they can communicate better and help victim through judicial process. In our country where people minds are still infested with patriarchal norms and who still consider disabled women as stigma, burden and an object, it will be a great mistake to think that such women could come to administration in search of justice. We have to make sure that administration finds them and aware those about their inalienable right to live with dignity and it could become feasible with help of social organisation, NGOs, State women commission constituting different groups working for the cause. Special cells addressing the needs and problems of persons with disabilities should be constituted in every department and government office especially in National and State Women commission. The problem of “missing women” could only be solved with frequent collection of data disaggregated by type of disability and gender to ensure that policies framed are actually being put to use and to achieve the same it is required on urgent basis that National Crime Record Bureau should also start compiling data of violence and abuse against women with disabilities so that effective steps can be taken to make lives of such women worth living.