
REPRODUCTIVE RIGHTS OF GIRLS AND WOMEN WITH DISABILITIES: A HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

This paper discusses women with disabilities in relation to their reproductive rights from worldwide standpoints and with particular attention to the situation of India. The text focuses on existing challenges of access to healthcare services, social marginalization, and lack of appropriate legal protection that influences such marginalization. It stresses the need for inclusiveness of policies, increasing access to health services, and an urgent need for comprehensive data collection with regard to these issues at a global level. Strengthening the legislative framework, expanding health care facilities in a disability-friendly way, and increasing public awareness to reduce discriminatory attitudes are some of the efforts in India. This research in this manner also shows a detail nature of the need for educating and economically empowering each and every woman with disabilities in general nature so that they can easily and effectively understand their own rights. It requires always a multi-faceted approach by government, international organizations, and civil society to ensure recognition and respect for women with disabilities as equal rights holders. The study goes further to call for international cooperation in laying the groundwork that could lead to an inclusive, fairer world where reproductive rights of women, including those with disabilities, would be safeguarded and preserved.

Keywords: Abortion, Contraception, Disability, Justice, Reproductive Health Care, International Law, Indian Laws

Introduction

“Disability should not be an obstacle to success” - Stephen Hawking

Progress in the 21st century is such that marked progress has been made in the domains of liberalisation, the concept of constitutionalism pluralism, and post-modernism. With increasing recognition and protection of the autonomy of people both by legislative and judicial agencies, these changes have brought in a shift in focus from common societal rights to personal rights. These revolutionary changes have not left India affected, as the Indian court has played a salient role in protecting the fundamental freedoms of all sectors of society not only there but as well as in the international zones and other countries as well. The reproductive rights of women have proved a critical area of focus amongst these rights, since the courts have ratified women's right to make independent decisions about their bodies.¹

Reproductive rights within international aspects and Indian contexts can be maintained through proper aspects to show the broader aspects of rights involving freedom to select if one particular desire their children, preservation of different nature of reproductive health, and contraception alongside with comprehensive nature of sexual education.² For women in general, these detail nature of rights are always tends to be highly significant in nature in the larger context of a patriarchal culture, which shows that they have traditionally been subjected to different decisions to be made by male figures in their lives. These rights have led to some highly argued scholarly and legal discussions, especially on the issues of the legality and ethicality of abortion. This has brought a division whereby different opinions exist on whether women should be allowed to have a free will in deciding on their pregnancies. Most often, religious and traditional arguments clash with legal and human rights concepts.

In the context of women with disabilities, existing biases and institutional barriers further complicate their claims to reproductive rights. Women with disabilities have faced decades of exclusion and denial of the right to self-determination in deciding upon their own reproductive health.³ They have time and again been victims of coercive sterilization, refusal of birth control

¹ Dorota Anna Gozdecka, “Backlash or Widening the Gap?: Women’s Reproductive Rights in the Twenty-First Century” 2 Mdpi 1-14 (2020).

² Maud Anne Bracke, “Women’s Rights, Family Planning, and Population Control: The Emergence of Reproductive Rights in the United Nations (1960s–70s)” 4 The International History Review 751-771 (2022).

³ Irfat Ara1 and Mudasir Maqbool, “Reproductive Health of Women: Implications and Attributes” 6 International Journal of Cyrrtent Reseach in Physiology and Pharmacology 751-771 (2022).

services, or compulsion into abortions. Considering the interface of disability and gender rights, it is important to give a more exquisite view of the barriers that disabled women face with regard to exercising their reproductive rights. The chapter then considers how international norms and Indian legislative frameworks attempt to move towards securing women with disability's reproductive rights. Moreover, the paper will also analyse the legal approach and the present situation for an in-depth understanding of the continuous challenges and possible remedies to be able to guarantee the complete recognition and protection of the reproductive rights of impaired women.

Disability vis-a-vis Reproductive Rights of Disabled Women

"Women with disabilities often face exclusion from carrying out the primary life tasks traditionally designated and expected of women." Indeed, this statement is particularly true in the domains of sexuality, reproduction, particularly parenting. While women are often associated with and highly valued for their maternal responsibilities, physical appeal, and reproductive potential, women who suffer from disabilities are frequently perceived as deficient in all of these aspects.⁴ The presence of disability impacts the accessibility and manner in which women are allowed to engage in sexual, reproduction, and caring behaviours. In a society where women are predominantly characterised as sexual beings, progenitors, and carers, the prevailing culture restricts the ability of crippled women to engage in motherhood and renders them devoid of their designated roles. Therefore, even in modern culture, women who are handicapped are deprived of the predominantly imposed gender roles and the highly esteemed qualities associated with women. Throughout the international human rights community, there is a growing recognition of the sexual and reproductive health requirements of women within international relations. Human rights law has explicitly acknowledged women's entitlement to intimate relationships and reproductive autonomy by establishing safeguards and responsibilities regarding marital status, availability of contraceptives, family planning, prenatal and postnatal healthcare, sexual assault, and sexually transmitted infections.⁵ Beginning with the core human rights principles of equality, dignity, and inclusion, we investigate the advancement of these principles in the domains of sexual citizenship,

⁴ Patricia Pérez-Curiel, Eva Vicente, et.al., "The Right to Sexuality, Reproductive Health, and Found a Family for People with Intellectual Disability: A Systematic Review" 9 *International Journal of Environmental Research and Public Health* 1-29 (2023).

⁵ Jordan Fletcher, Halina Yee, et.al., "Centering Disability Visibility in Reproductive Health Care: Dismantling Barriers to Achieve Reproductive Equity" 19 *Emerging Issues in Adolescent and Young Adult Sexual, Reproductive, and Gender Health – Review* 1-11 (2023).

reproductive healthcare, and decision-making and parenting for women with disabilities. The contention put forth is that women with disabilities have inherent human rights to exercise self-determination over their reproductive condition and sexual well-being.⁶ First, we provide a concise summary of the different international human rights treaties that address sexual healthcare and reproductive rights. The objective of this research on the selective manner always going to upgrade the comprehension of the intersection between both gender and related disability related topics on sexuality, reproduction, and raising children in the lives of women with disabilities. Our goal is to highlight new practices, attitudes, along with institutional arrangements that will empower women with disabilities to fully participate and achieve intimate fulfilment in our society.

Considering the international dimensions of the mentioned subjects, it is possible to elucidate them from an Indian national standpoint by examining the specific rights granted by the Disability Act along with Mental Healthcare Act, as well as the many choices available in different parts of the country.⁷ Regarding different factors of the other nature of the sexual and reproductive rights-based changes to showcase the of women profound intellectual disability (WID), particularly the woman herself and their careers, protectors, and her physicians whom are treating the scenario are concerned. In these particular, the legal systems of the seeks the different numbers of psychiatrist's perspectives from to assess the "capacity to consent" of a woman of Indian descent (WID) for medical operations as such of a pregnancy and permanently stables sterilising others. In addition to physical and obstetric examinations, evaluations of mental state and intelligence quotient (IQ) are conducted as well to aid comprehension of the aforementioned matter. The Rights of Persons with Disabilities Act, 2016, (RPWD), as well as the Mental Healthcare Act, 2017, lay out the definition of free and informed consent and provide guidelines for evaluating capacity. The assessment of "capacity to consent" for reproductive system treatments in women of intimate partner dysfunction (WID) is crucial and can provide guidance to physicians. Before determining capacity, the physicians who treated them should provide a WID with relevant information on the planned operation, its risks, and its advantages using several communication methods, and then assess the individual's "capacity to give consent" to the treatment. This paper provides a concise

⁶ Università Degli Studi Di Padova Department of Political Science, Law, and International Studies, "TOO OFTEN DENIED, TOO OFTEN NEGLECTED: WOMEN'S SEXUAL RIGHTS. on the Meanings, Controversies, and the Need for a Comprehensive, Positive Approach to Sexuality." 1-130 (2022)

⁷ Richard M. Duffy and Brendan D. Kelly, "India's Mental Healthcare Act, 2017" 1 In: India's Mental Healthcare Act, 2017. 81-106 (2020).

overview of the current laws regarding the sexual and reproductive health of women of limited sex (WID) and offers recommendations for physicians on how to address this matter

International Standards Governing Reproductive Rights of Women with Disabilities

A multitude of international, national, including regional norms and standards, such as human rights treaties and the results of many global conferences, advocate for the universal inclusion and empowerment of women and girls who have limitations throughout their whole lifespan. The agreements encompass the International Bill of Human Rights, the United Nations Charter, the Declaration on Elimination of Violence against Women, the Beijing Declaration and Platform for Action, the Vienna Declaration and Program of Action, the Copenhagen Declaration and Program of Action, World Programme of Action concerning Disabled persons, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities, 2006, the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991, the UN Millennium Standard Rules for Equalization of Opportunities, 1993, the ICPD Program of Action, Cairo 1994, the World Health Organization World Health Assembly Resolution, 2005, the United Nations Security Council Resolution, 2019, and Agenda of Nations for Sustainable Development, 2030.

The following description illustrates the aforementioned agreements of International standards governing Reproductive Rights of Disabled Women:

(a) The International Bill of Human Rights

The International Bill of Human Rights is comprised of the Universal Declaration of Human Rights, the International Covenant on Social, Cultural, and Economic Rights, and the International Covenant on Civil and Political Rights, together with its two Optional Protocols.⁸ In February 1947, a coalition consisting of Eleanor Roosevelt, Pen-Chun Chang, and Charles Malik began the process of drafting the International Bill of Human Rights. In response to a request from the UN Secretariat, John Humphrey, who serves as the Director of the UN Secretariat's Division for Human Rights, was tasked with developing an initial revision.

⁸ Jack Donnelly and Daniel J. Whelan, "International Human Rights" 6 *Law, Politics & International Relations, Social Sciences* 392 (2020).

(b) The United Nations Charter

The United Nations Charter, ratified on June 26, 1945, serves as the essential foundational text of the United Nations.⁹ The International Treaty confers to the body the authority to consider and resolve a range of matters. The Charter formalizes fundamental concepts of international relations, such as the idea of sovereign equality and the prohibition of the use of force. Since its establishment, the United Nations' mission and activities have been directed by its Constitution, which has undergone three amendments. Annexed to the UN Charter, the Statute of the International Tribunal of Justice governs the operations of the major judicial body, the International Court of Justice.

(c) The Declaration on Elimination of Violence against Women

Violence against women and girls (VAWG) here refers to a range of different actions include female genital mutilation alongside with sex abuse, human trafficking, including child marriage.¹⁰ These acts are often unperceived and are based on gender, resulting in physical, sexual, and psychological damage. In 1993, the UN General Assembly established the definition of VAWG. Its adverse health consequences as well as early-onset educational disadvantages hinder the achievement of universal education, decrease access to higher education, and limit employment opportunities. Vulnerable adult women (VAWG) are particularly prone to certain demographic groups such as young girls, elderly women, lesbian, bisexual, transgender, or as intersex women, migrants and refugees, indigenous women, ethnic minorities, women affected by HIV and disability, and women facing humanitarian emergencies. This obstacle continues to impede the achievement of equality, advancement, peace, and the actualization of the human rights and women and girls.

(d) The Beijing Declaration and Platform for Action

The Beijing Declaration and the Beijing Platform for Action, which were unanimously accepted by 189 countries, serve as a comprehensive agenda for the empowerment of women

⁹ Renren Gong, "Chapter 1 the Emergence and Significance of the Human Rights Provisions in the Charter of the United Nations In" 5 Chinese Yearbook of Human Rights 1-33 (2023).

¹⁰ Patience Mutunani, "Gendered Intersections Between Labia Elongation, Child Marriage, Bride Price, Polygamy and HIV Infection" 1 University of Portsmouth. 1-380 (2023).

and are widely regarded as the primary global policy statement on gender equality.¹¹ The primary goal of the Platform for Action is to empower all women, in complete alignment with the objectives and principles of the Charter of the United Nations and existing international law. Full realisation of all human rights as well as fundamental freedoms of women is crucial for their empowerment.

(e) The Vienna Declaration and Program of Action

At the World Conference on Human Rights on June 25, 1993, delegates from 171 states unanimously adopted the Vienna Declaration and Programme of Action.¹² The following year, on December 20, 1993, the United Nations General Assembly formally endorsed the document.

(f) The Copenhagen Declaration and Program of Action

The consensus to place people at the center of the development process emerged at the World Summit for Social Development in 1995 with the ratification of the Copenhagen Declaration and Programme of Action.¹³ The Declaration contained a clear consensus on three basic goals of social development, namely, the eradication of poverty, promotion of full and productive employment, and promotion of social integration, and a broad action programme to achieve them successfully.

(g) World Programme of Action concerning Disabled persons

One of the major outcomes of the International Year of Disabled Persons was the formulation of the World Programme of Action for Disabled Persons, which the General Assembly endorsed on 3 December 1982, in its resolution 37/52.¹⁴ The WPA presents an international strategy toward the promotion of prevention of disabilities, rehabilitation, and equalization of opportunities for people with disabilities. Indeed, the article emphasizes the need of considering the matter of disability just from the perspective of rights. This paper comprises a meticulous examination of ideas, concepts, and definitions related to disability; a

¹¹ World Conference on Women, "Beijing Declaration and Platform for Action Fourth World Conference on Women" 1-123 (1995)

¹² Theresia Degener and Yolán Koster-Dreese, "Vienna Declaration and Programme of Action", in Brill (ed.) 429-445 (World Conference on Human Rights on 25 June 1993, 1st edn., 1993).

¹³ John Angus, "The United Nations World Summit for Social Development. Copenhagen" 1 Social Services Policy (1995).

¹⁴ General Assembly, World Programme of Action Concerning Disabled Persons, UN GAOR, UN Doc 37/52. 1/ (Dec. 03, 1982).

comprehensive assessment of the global situation; and suggestions for action at national, regional, as well as international levels.

(h) The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The United Nations Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979 and enforced in 1981, recognized that discriminatory acts against women still prevailed and called for governments to guarantee their complete development.¹⁵ The convention covers areas including civil rights, legal standing, human reproduction, and culture. CEDAW promotes women's rights to reproduction, parenthood, and equal responsibilities in family life and education by challenging cultural assumptions and promoting maternity protection, including family planning.

(i) The Convention on the Rights of Persons with Disabilities, 2006

Adopted by the United Nations in 2006, the UNCRPD came into the world when it opened for signature in 2007.¹⁶ It is intended for ensuring that persons with disabilities enjoy full rights and fundamental freedoms and that their dignity be respected. According to the convention, persons with disabilities include those who experience long-term impairments in their physical, mental, intellectual, or sensory capabilities of an individual can prevent equal participation in society.

(j) The United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991

General Assembly resolution on the protection of persons with mental illness and the improvement of mental health care. The Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, annexed to the present resolution, are hereby adopted.¹⁷ The Secretary-General is requested to include the text of the Principles,

¹⁵ Andrew Byrnes and Eleanor Bath, "Violence Against Women, the Obligation of Due Diligence, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women—Recent Developments" 8 517-533 (2008).

¹⁶ General Assembly, The Convention on the Rights of Persons with Disabilities, UN GAOR, UN Doc No 19 (May 03, 2008).

¹⁷ General Assembly, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, UN GAOR, UN Doc UN General Assembly (Dec. 17, 1991).

together with the preambular part, in the next edition of the publication entitled "Human Rights: A Compilation of International Instruments". The Secretary-General is also requested to ensure the widest possible distribution of the Principles. Adopted at the 75th plenary meeting on December 17, 1991.

(k) The UN Millennium Standard Rules for Equalization of Opportunities, 1993

The rules are an instrument for policy making and also a basis for technical and economic cooperation. The Standard Rules are composed of 22 guiding principles which summarize the World Programming of Action.¹⁸ The Rules embody the human rights perspective reflected during the Decade. Unequal opportunity has been described as a situation where certain groups within the society enjoy undeserved privilege or advantage. In that regard, equalization of opportunity calls for the eradication of undue advantage held to be enjoyed by privileged groups.

(l) The ICPD Program of Action, Cairo 1994

Adopted by consensus on 13 September 1994, the Programme of Action endorses a more people-centered approach to development and population, focusing on upholding the rights and meeting the needs of women and men rather than achieving demographic targets.

(m) The World Health Organization World Health Assembly Resolution, 2005

The International Health Regulations 2005 represent the legally binding international instrument applicable to all Member States of the World Health Organisation.¹⁹ The scope and aim of the IHR 2005 are to prevent, protect against, control, and provide a public health response to the international spread of disease.

(n) The United Nations Security Council Resolution, 2019

In 2019, the United Nations Security Council, through resolutions 2493 and 2467, respectively strengthened the women, peace, and security framework and conflict-related sexual violence.

¹⁸ General Assembly, Standard Rules on the Equalization of Opportunities for Persons with Disabilities, UN GAOR, UN Doc UN General Assembly (Dec. 20, 1993).

¹⁹ General Assembly, Fifty-Eighth World Health Assembly, UN GAOR, UN Doc Wha58/2005/Rec/1 (Dec. 26, 2004).

Both resolutions encouraged developing strategies that would suit the individual country context, conditions, and needs with regard to facilitating women's contribution toward peace making processes and urged member states to ensure full implementation.²⁰ Resolutions 2475 and 2452 were dedicated to the situation concerning persons with disabilities in armed conflict. While Resolution 2452 established the United Nations Mission in Yemen, Resolution 2482 focused on threats to international peace and security.

(o) Agenda of Nations for Sustainable Development, 2030

The 2030 Agenda of Nations for Sustainable Development established a distinct objective focused on achieving gender equality and empowering women and girls.²¹ It also includes individuals with disabilities in the Sustainable Development Goals (SDGs) associated with poverty, hunger, education, washing, sanitation, as well hygiene (WASH), economic growth and employment, inequality, accessibility of human settlements, climate change, alongside data, observing, and accountability.

Successful execution of the 2030 Agenda would additionally enhance the integration and empowerment of women and girls with disabilities. Moreover, this directly supports the execution of the United Nations Disability Inclusion Strategy (UNDIS), which UN Women is strongly dedicated to endorsing as a component of its own business strategy on empowering women and girls with disabilities.²²

Indian Laws, Acts and Regulations to promote Reproductive Rights of Disabled Women

The female population, in general, has conventionally constituted the single largest majority of the crippled population in different areas and states in India, accounting for 44% of the crippled population. Equal access to all rights and services is no more than an abstract reality, and women who are handicapped can readily encounter further biases, discrimination, neglect, abuse, and even exclusion.²³ The percentage of females among children aged 5-19 years with

²⁰ Carrie Booth Walling, "Global Governance: A Review of Multilateralism and International Organizations" 26 *The United Nations Security Council and Human Rights* 291-306 (2020).

²¹ Walter Leal Filho, Marina Kovaleva, et.al., "Promoting Gender Equality Across the Sustainable Development Goals" 25 *Environment, Development and Sustainability* (2023) 25:14177–14198 14177–14198 (2022).

²² Social Development Division, No 2022/06, "Preferential Contracting for Persons with Disabilities: Approaches to Improving Employment Opportunities and Outcomes for Persons with Disabilities and Disability Inclusion in Business Practices" 1-84 (2022).

²³ Mental Healthcare Act, 2017 (Acts of Parliament, 2017), ss. No. 10, Section 21 (a)

impairments completing an educational institution is 43%. About 54% of the 'illiterate' impaired population in India constitutes women with impairments. In employment, women with disabilities are at a rate of 23% whereas males with impairments are employed at 47%.

Following is the explanation of the Indian laws, acts and regulations dealing with Reproductive Rights of Disabled Women:

(a) Existing Constitutional and Legal Frameworks

The Constitution of India provides for equal status for both the sexes and empowers the State to make amends to socio-economic, instructional, and political inequalities. The Fundamental Rights have prohibition against discrimination based on race, caste, sexual orientation, religion, or birthplace. Constitutional benefits are equal opportunities for employment, special privileges to women and children, and dispensation of justice with equal opportunity. The State is obliged to provide free legal aid, ensure just working conditions and maternity benefit. Besides, the Constitution attaches much significance to the process of improving nutritional and living standards, bringing about harmony and renouncing those customs and ways that demean the dignity of the female gender.

(b) The Rights of Persons with Disabilities Act, 2016

The Indian Parliament passed legislation relating to disability, i.e., the Rights of Persons with Disabilities Act, 2016, where, it has addressed the unequal consequences of disabled status and gender as combined in women. Previous law, which was known as the People with Disabilities (Equal Chances, Protection of Rights, and Full Integration) Act, 1995, did not deal particularly with WWDs.²⁴ The 2006 National Policy during Persons with Disabilities recognized the abuses and exploitation which WWDs have been vulnerable to. This had introduced education programs, employment, rehabilitation, home housing and allowance for child care. Nevertheless, all these provisions continued to exist only on paper.

This Act brought an essential change in the statutory regime of India, relating to the concerns of discrimination, violence, political and civil rights, socio-economic rights, and cultural rights,

²⁴ Swagata Raha and Shampa Sengupta, "Rights of Women with Disabilities Under Indian Legislations" 14 *Socio-Legal Review* 1-23 (2018).

besides creating a monitoring body and a Special Court for the trial of offenses against persons with disabilities.

(c) The Medical Termination of Pregnancy Act, 1971, (Amendment, 2020)

The proposed act revises this provision to read that pregnancies can be terminated at a period less than 20 weeks, so long as a qualified physician offers their opinion.²⁵ Pregnancies terminated outside of 20 to 24 weeks will require the approval of two qualified medical practitioners.

(d) The Mental Health Care Act, 2017

The Mental Health Care Act 2017, which came into effect on 29 May 2018 upon its enactment on 7 April 2017, had principally decriminalized the attempt to suicide that was punishable under Article 309 of the Indian Penal Code.²⁶

(e) The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

As the Medical Termination of Pregnancy Amendment Bill 2020, Medical Termination of Pregnancy Amendment Act 2021 had brought a lot of changes to the Medical Termination of Pregnancy Act, 1971.²⁷ This section was amended as per this Bill to include that a pregnancy may be terminated within 20 weeks on the opinion of a registered medical practitioner. Termination of pregnancy between 20 and 24 weeks would require the approval of two qualified medical practitioners.

Violence against Women with Disabilities

Individuals with disabilities, particularly women and girls, face a higher risk of violence including physical, emotional, verbal and sexual abuse. In India, the percentage of persons with

²⁵ Veronica Arora and Ishwar C Verma, "The Medical Termination of Pregnancy (Amendment) Act, 2021: A Step Towards Liberation" 1 *Law and Bioethics* 1-4 (2021).

²⁶ Suresh Bada Math, Vinay Basavaraju, et.al., "Mental Healthcare Act 2017 – Aspiration to Action" 1 *Review Article* 1-7 (2017).

²⁷ Mrutyunjaya Mishra and Pettala Ramakrishna, "Ensuring Multifarious Development of Students with Multiple Disabilities" 1 *Education of Socio-Economic Disadvantaged Groups* 1-7 (2023).

disabilities who experience violence is not accurately reflected in crime data. Discrimination and lack of autonomy contribute to the vulnerability of this population.

Article 16 of the UNCRPD requires States Parties to protect persons with disabilities from exploitation, violence, and abuse, including within the home and beyond. However, the RPD Act does not explicitly address the vulnerability of women with disabilities to violence. Section 7(1) of the RPD Act includes a general clause for the government to take action to protect PWDs from abuse. The Central RPD Rules, 2017 do not outline procedures or an action plan to prevent violence against women with disabilities.²⁸²⁹

The legal framework in India recognizes the vulnerability of children and women with disabilities to sexual offences, with specific provisions in the Protection of Children from Sexual Offences Act, Criminal Law Amendment Act, Juvenile Justice Act, Indian Penal Code and POCSO Act. Disabilities are considered aggravating factors for such offences, with enhanced penalties for aggravated rape and sexual assault against individuals with limitations.³⁰

The Criminal Law Amendment Act, 2013 introduced new procedures for handling sexual offences against women with disabilities, including providing interpreters or special educators and video-recording their statements, and ensuring they do not have to go to the police station.³¹

The POCSO Act, 2012 allows for the involvement of special educators or experts for recording the statement of a child with disabilities, but lack of facilities and training in courts has led to delays in implementing this rule.³² Disability related laws are not effectively enforced, with courts not being barrier-free and police often failing to include serious charges in the charge sheet. Availability of special educators or experts at the district level is also lacking, raising concerns about the credibility of the victim's testimony.³³

²⁸ RPD Act, Section 7(1).

²⁹ RPD Act, Section 7(3).

³⁰ Shraddha Chaudhary, "Reforms to the Legal Framework of Child Sexual Abuse in India: Legislative Band-Aids on Systemic Wounds" 44 Statute Law Review 1-22 (2020).

³¹ Protection of Children from Sexual Offences Act, 2012 (Acts of Parliament, (2012) (India), ss. No. 32, Sections 26(3) and 38(2)

³² Dinakaran Damodharan, Lakshmi Sravanti, et.al., "The Protection of Children from Sexual Offences (POCSO) Act, 2012" 1 FORENSIC PSYCHIATRY IN INDIA Interface of Indian Laws & Mental Health 73-191 (2012).

³³ State v. Mohd. Ayub, (2013) Spl. (POCSO) Case No. 15, decided on 8-12-2016 cited in CCL- NLSIU, Study on the Working of Special Courts under the POCSO Act, 2012 in Maharashtra (2017), 33.

In a rape case involving mentally impaired girls in Maharashtra, the court refused to believe their testimonies recorded with assistance. The Supreme Court in *Eera vs State (NCT of Delhi)* clarified that “age” cannot include “mental age” in interpretation of statutes.

The Judicial Approach

The paper reviews the role of litigation in seeking redress for violations of reproductive rights in India, where a woman dies in childbirth every five minutes. The following cases illustrate the contribution of Indian Judiciary in protecting the Reproductive Rights of Disabled Women:

(a) Suchita Srivastava vs Chandigarh Administration, 2009

One such case pending in the Supreme Court was that of a woman orphaned and intellectually disabled, raped, and impregnated. Her incapacity to look after a child led the Punjab & Haryana High Court to order the abortion of her pregnancy with the use of Section 3 of the Medical Termination of Pregnancy Act, 1971, without her consent. By staying the order, the Supreme Court explained that Article 21 of the Constitution protected a woman's fundamental right to reproductive choice.³⁴ It differentiated between mental illness and intellectual disability in the mind of a person and passed an order: "The permission to have the order being relieved of her pregnancy cannot be granted because it was against her will".

(b) Laxmi Mandal vs Deen Dayal Harinagar Hospital, 2009

The following are the issues being petitioned: birth status of the petitioner, right to health care, inclusive of reproductive health, right to food and nutrition, failure to implement state-sponsored programs to reduce infant and maternal mortality, and thereafter denial of appropriate maternal healthcare.³⁵

(c) Anand Manharlal Brambhhatt vs State of Gujarat, 2015

This petition is filed against the order and direction passed by the Sessions Court in Criminal Misc.³⁶ Application No.214/2015 for directing to terminate the pregnancy of respondent no.3,

³⁴ *Suchita Srivastava v. Chandigarh Administration*, CIVIL APPEAL NO.5845 of 2009 (Arising Out of S.L.P. (C) No. 17985 of 2009).

³⁵ *Laxmi Mandal v. Deen Dayal Harinagar Hospital*, W.P.(C) 10700/2009.

³⁶ *Anand Manharlal Brahmbhatt v. State of Gujarat*, R/SCR.A/4204/2015.

Sunitaben, a seriously mentally ill patient. On admission to the Mental Health Hospital, Ahmedabad, Sunitaben was diagnosed to be suffering from a pregnancy of approximately fourteen weeks.

(d) G.M and Others vs Moldova

The present case evaluates the practice of abortions and other contraceptive measures being performed on women with intellectual disability in the Republic of Moldova.³⁷ By finding a violation of Article 3, the Court further developed the existing case law on the issue of reproductive rights but also contributed to the rights of persons with disabilities under the convention, especially underlining the importance of self-determination of the individuals. Basically, this article deals with two points.

The Present Scenario

The status of the women's reproductive rights with a disability, therefore, continues to remain a multiple combination of gains and pending challenges across the globe. International recognition of the rights of women with disabilities continued to be documented through instruments such as the Convention on the Rights of Persons with Disabilities, along with the Convention on the Elimination of All Forms of Discrimination Against Women. The above mechanisms have focused on what is needed to ensure access to reproductive health by persons with disabilities and protect them from discrimination of all forms. However, despite such political commitment, implementation becomes widely variable between regions, and plural women still face challenges in accessing quality reproductive health, like that of lack of facilities and information.

Pervasive social attitudes and stigma are continually some of the biggest barriers to achieving the reproductive rights of women with disability. For instance, deep-rooted beliefs are found in most cultures that women with disabilities cannot decide on their own reproductive lives, leading to paternally imposed practices on them with regard to sterilization, and sometimes, denial of reproductive services. This is part and parcel of the cycle of marginalization, where marginalization feeds more marginalization because the voice of women with disabilities is often not given its due, resulting in ineffective policies that cater to their specific needs.

³⁷ G.M. v. The Republic of Moldova, Application No. 44394/15.

There is also a rising global movement and advocacy for the advancement of the reproductive rights of women with disabilities. International organizations, along with grassroots groups, take very active part in raising awareness through education and advocacy for policy reforms that ensure the inclusion and protection of women with disabilities in health matters related to reproduction. While these efforts are yielding increasingly inclusive laws and practices, further work remains to be accomplished to ensure that all women with disabilities can fully exercise the right to reproduce free from discrimination and coercive practices.

Conclusion and Suggestions

While there is progress being made in recognition and the advancement of reproductive rights for women with disabilities globally, there are significant barriers to implementation. How these international instruments-which provide the framework for equality, such as CRPD and CEDAW-are actually implemented varies among jurisdictions. Discriminatory attitudes, social stigma, and lack of access to healthcare continue to prevent basic rights from being fully realized. On the other hand, the growing tide of lobbying efforts internationally and locally provides a certain hope that the years to come will see more comprehensive and fair legislation enacted. The most important part of overcoming these challenges is ensuring that handicapped women's voices are represented and respected in policy-making processes. This can be achieved through continuous commitment at the global level for a world where every woman, whatever her capacities, would be able to make free and informed reproductive choices in dignity.

The suggestions to protect the Reproductive Rights of Disabled Women can be analysed under the two heads:

- (i) Global Contexts
- (ii) Indian Contexts

The following suggestions are put forward to deal with the current situation of Global Context:

- (a) It is important to make sure that a comprehensive approach in formulating a response to the future of reproductive equality for women with disabilities approached at an international level, it should be a matter of top priority by governments and

international organisations to formulate and implement comprehensive policies which ensure access to easily accessible health care services.

- (b) Professional training is paramount for all health professionals on the special needs that women living with disabilities have in eliminating discriminatory practices.
- (c) Much more should be done in terms of data collection and analysis concerning this particular group to offer more specific yet effective treatments.
- (d) In addition, this work of advocacy and education is expected to be continuously pursued in increasing awareness and challenging discrimination at the level of civil society so that women with disabilities are recognized and treated as bearers of rights.
- (e) This international work can further be supported by cross-border cooperation with the aim of exchanging best practices and developing common standards.

The following suggestions are put forward to deal with the current situation of Indian Context:

- (a) As such, the future focus in India should be on developing better legal frameworks and making sure their enforcement is strict to protect reproductive rights of disabled women.
- (b) Inclusion of disability-friendly services within public health programs is central to the scaling up of health services.
- (c) Similarly, education campaigns involving both the general community and health professionals can work to reduce stigma and increase understanding.
- (d) Empowering women with disabilities to become active advocates and protectors of their own rights will require improvement in their educational and economic opportunities.
- (e) The development of an equitable culture that promotes and protects the reproductive rights of all women will depend on government and NGO participation-including disability rights organizations.

Finally, since the bad attitude of society towards them as human beings is the main cause of the violation of their rights, an effort to eliminate this obstacle from society should be a major

concern of the government and the non-governmental organizations working in this field. It is hoped that with the adoption of these measures, the health and reproductive rights of women with disabilities will be largely respected.