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## Tracing the Recognition of the Disabled Community in Anti-Sexual Harassment Law: A Cross-Jurisdictional Analysis

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*Sexual harassment doesn't always have to be overt. It can also manifest as bullying someone or a group of people based on their sex, gender identity (man, woman, trans, intersex, nonbinary), or sexual orientation. <sup>1</sup>Intimidating, disrespectful, or teasing comments based on preconceptions (such as those about how specific people "are" or ought to act) are other examples of this (queer, straight, bisexual, lesbian, gay, asexual, pansexual, two-spirit, etc.) But hold on. Is the disability community still relevant? No. The only community whose suffering is not acknowledged is this one. The perverts' eyes are not averted from them or uninterested in them. Why then does the law not provide them with sufficient relief and protection? We shall examine the current state of affairs in both our nation and the rest of the world in this piece. This article's goal is to identify legal solutions that will both avoid and eliminate this issue.*

**Keywords:** *sexual harassment, jurisdiction, law, disabled community.*

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<sup>1</sup> *Dr. Punita K. Sodhi v Union of India & Ors* WP (C) 367/2009

## INTRODUCTION: HOW DO YOU DEFINE DISABILITY?

According to the Department of Justice's<sup>2</sup> definition of 'disability' in the NCVS, this term covers a wide range of restrictions, including sensory (vision, hearing), cognitive, self-care, and ambulatory or movement restrictions. People with various disabilities could experience various difficulties and have quite varied requirements. Some limitations may increase a person's vulnerability to crimes like sexual abuse or assault.<sup>3</sup> Sexual assault increases a person's risk of developing a disability, especially trauma-related mental disease.

## ABUSE OF DISABLED PEOPLE

According to the statistical profile of disabled people in India (2016)<sup>4</sup>, 2.68 crores of the country's total population are disabled, based on data from the 2011 census. Of this total, 1.18 crore, or 44 percent, are thought to be women. The most recent NCRB statistics for 2020<sup>5</sup> also show a total of 3,71,503 offenses against women. However, because the NCRB does not keep separate records for disabled women, there is no official information on sexual assault and other atrocities committed against disabled women in India. Additionally, a woman's inability to say no is frequently mistaken for agreement in situations when she suffers from a cognitive handicap, a condition that makes it difficult to speak properly. Additionally, carers for a disabled lady who lives at home or in an institution are frequently violent offenders. Sexual assault against disabled persons is a quiet epidemic that is frequently disregarded both inside and outside of groups concerned with reproductive health, human rights, and justice. Disability-related sexual assault

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<sup>2</sup> 'Sexual Abuse of People with Disabilities' (*Rainn*) <<https://www.rainn.org/articles/sexual-abuse-people-disabilities#:~:text=Understanding%20the%20crime&text=The%20term%20%E2%80%9Cdisability%2C%E2%80%9C>> accessed 04 February 2023

<sup>3</sup> *Vishaka v State of Rajasthan* AIR (1997) SC 3011

<sup>4</sup> 'Disabled Population in India as per census 2011' (*Enabled*, 28 August 2017) <[https://enabled.in/wp/disabled-population-in-india-as-per-census-2011-2016-updated/#:~:text=2017%2011%20Comments-Disabled%20Population%20in%20India%20as%20per%20census%202011%20\(2016%20updated,\(1.18%20Cr%20\)%20are%20females](https://enabled.in/wp/disabled-population-in-india-as-per-census-2011-2016-updated/#:~:text=2017%2011%20Comments-Disabled%20Population%20in%20India%20as%20per%20census%202011%20(2016%20updated,(1.18%20Cr%20)%20are%20females)> accessed 04 February 2023

<sup>5</sup> 'Crime in India 2020' (NCRB, 2021) <<https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>> accessed 04 February 2023

and abuse are frequently not reported.<sup>6</sup> According to the National Crime Victimization Survey, people with disabilities experience crime at higher rates than the general population (NCVS).

People with disabilities – and particularly women – already encounter ableism in a society that is not geared toward meeting their access requirements, as described in the CAP report "Transforming the Culture of Power: An Examination of Gender-Based Violence in the United States." Due to the additional objectification, they must now cope with a patriarchal culture with a power dynamic that limits their access and autonomy. Due to ableism and perceived power disparities in relationships, which are frequently exploited or used for manipulation, disabled women are frequently victimized for their impairments and disregarded by society.<sup>7</sup>

### **DISABLED ARE MORE PRONE TO ABUSE**

According to the 2011 Census, 26.8 million people, or 2.2 percent of India's population<sup>8</sup>, are living with a disability.<sup>9</sup> Since the World Health Organization estimates that 15% of the world's population has a disability, many people think that this figure is understated. There is a higher danger of violence and sexual violence for girls and women with disabilities, according to numerous research papers.<sup>10</sup> Furthermore, it might be harder for physically challenged women to flee violence. Deaf people could find it difficult to ask for assistance or express mistreatment. Women and girls with intellectual or psychosocial problems may be unaware that engaging in non-consensual sexual activity is illegal and needs to be reported. These difficulties are exacerbated by the stigma associated with sexuality and disabilities.

### **WHY AND HOW IS THIS PROBLEM MORE SEVERE FOR DISABLED PEOPLE?**

- Someone who requires ongoing support might rely on the abuser for care.

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<sup>6</sup> *Dr. Salma Khatoon v Secretary, Govt. of India, Department of AYUSH* WP (C) 9144/2009

<sup>7</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms

<sup>8</sup> Nandita Saikia et al., 'Disability Divides in India: Evidence from the 2011 Census' (2016) 11(8) PloS One <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4973875/>> accessed 05 February 2023

<sup>9</sup> *Apparel Export Promotion Council v A.K. Chopra* (1999) 1 SCC 759

<sup>10</sup> Kathleen C. Basile et al., 'Disability and Risk of Recent Sexual Violence in the United States' (2016) 106(5) Am J Public Health <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4985079/>> accessed 05 February 2023

- The offender may use this power to compel someone to engage in sexual activity or non-consensual intercourse.
- The likelihood that an allegation of sexual assault or abuse will be taken seriously may be lower for people with disabilities.
- Many people with impairments could not comprehend healthy sexuality or know what kinds of touches are acceptable or inappropriate.
- Some limitations may make it difficult for victims to express their consent to engage in sexual behavior, and abusers may use this.

## **FINDINGS OF SEXUAL HARASSMENT OF DISABLED COMMUNITIES IN USA AND INDIA**

In the **USA**, sexual assaults on people with intellectual disabilities occur seven times more frequently than against those without such disabilities. That figure is based on data that the Justice Department collected from unpublished federal crime statistics for NPR. People with intellectual disabilities are targeted by predators because they are easy to manipulate and will have trouble testifying in court. Most of these crimes go unreported, uninvestigated, and unpunished.<sup>11</sup> The abuser is also allowed to abuse once more. Because these cases are challenging to win in court, police and prosecutors frequently hesitate to take them.

An intellectual disability is "characterized by significant limitation in both intellectual functioning and in adaptive behaviors," according to the American Association on Intellectual and Developmental Disabilities, a professional organization that represents professionals and contributes to the official definition. These adaptive skills encompass both social and practical abilities, such as the capacity to work and take care of one's health and safety. Social abilities include the capacity to deal with other people, obey laws, and avoid being mistreated.

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<sup>11</sup> *Ellison v Brady* (1991) 924 F.2d 872 (9th Cir.)

According to data from the reputable group Child Rights & You, it is a fact that should plague<sup>12</sup> every citizen that every 15 minutes, in India, a child is sexually molested (CRY). Among them, children with disabilities who are from economically disadvantaged areas of society become easy targets for sexual predators.<sup>13</sup> Sad to say, the National Crime Records Bureau (NCRB) does not keep data that is broken down by disability even though it can do so. In India, discrimination against the disabled is pervasive, and they frequently experience cruel treatment, including torture and sexual assault. The nodal agency in charge of upholding children's rights in our nation is another area with a dearth of data.

Disability rights are not perceived as being held by or enforced by disabled persons, notwithstanding the ground-breaking RPwD Act of 2016.<sup>14</sup> Why would the invisible minority pose even the slightest threat? The political elite believes that people with disabilities make up only 2.21 percent of the population overall, of which 69<sup>15</sup> percent are illiterate and live in rural areas of India. Most authorities, including the NCRB and NCPCR, are not particularly concerned with disability. The Uttar Pradesh Population Control and Stabilization Welfare Bill 2021, which places little value on a crippled child's life, serves as an example. India adopted the Convention on the Rights of Persons with Disabilities in 2007. The Right of Persons with Disabilities Act, which was enacted in 2016, defines several types of disabilities as well as their rights, entitlements, guardianship, authorities, offenses, and punishments.<sup>16</sup> The absence of representation for the disability community in mainstream sexual assault and harassment activism is the reason why disabled women continue to be unseen victims of violence despite these laws. Due to societal stigma and the various definitions of mental, emotional, and physical disability, there is a low reporting of instances, which is a problem. Additionally, the victims are frequently neither taken seriously nor believed.<sup>17</sup>

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<sup>12</sup> Priyanka Bhatt, 'Shame On Us, Every 15 Minutes, A Child Is Sexually Abused In India' (*India Times*, 30 April 2018) <<https://www.indiatimes.com/news/india/shame-on-us-every-15-minutes-a-child-is-sexually-abused-in-india-343842.html>> accessed 05 February 2023

<sup>13</sup> *U.S. Verma, Principal, DPS v National Commission for Women & Ors* WP (C) No 1730/2017

<sup>14</sup> Rights of Persons with Disabilities Act 2016

<sup>15</sup> Disabled Population in India as per census 2011 (n 4)

<sup>16</sup> *Tata Cellular v Union of India* (1994) 6 SCC 651 @ 676

<sup>17</sup> *S. Chitra v Director of Fire Services* WP (C) 37598/2006

## COMMON PROBLEMS FACED BY DISABLED SURVIVORS ON THEIR WAY TO JUSTICE

- Police are hesitant to record a rape survivor's impairment to its fullest extent, which compromises the process of gathering evidence.
- Interventions with good intentions may be ineffective.
- Discrimination against Indian women with disabilities typically occurs on both the grounds of gender and disability.
- Men, for example, are much more likely to get medical care because they frequently provide the majority of the family's cash.
- If the offender is a family member or caretaker, the police station may not even receive the report.
- Even if there is a progressive law, there is a lack of understanding of the autonomy and agency of women who live with a disability among police, medics, and even judges on the ground.

## IMPORTANCE OF SAFEGUARDING THE SEXUAL RIGHTS OF PERSONS WITH DISABILITY (PWD) IN INDIA

People with disabilities (PwD) are stigmatized because of their condition or because their stories are frequently ignored. Barriers to PWDs exercising their sexual rights have been shaped by the myth that they are asexual. Their right to sex education, sexual identity, sexual expression, and sexual orientation are all things that have been affected as a result, which has led to ignorance. They must have access to these rights to fulfill their total emotional and social well-being as well as their bodily demands.<sup>18</sup> They have a right to information about their sexual rights, which also guarantees them sexual safety and gives them the authority to denounce sexual assault.

However, the Rights of a Person with Disability Act (2016) does not define or utilize the term 'sexual rights,' however, it does cover issues like personal freedom, defense against abuse & exploitation, and protection against violence. In India, access to sexual and reproductive rights

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<sup>18</sup> *D.S. Grewal v Vimmi Joshi* (2009) 2 SCC 210

is a significant problem, but persons with PwD suffer a bigger problem with access to fundamental rights that are frequently abused or disregarded by society.<sup>19</sup> Language difficulties are a significant obstacle to access because, despite Hindi being the national language, the majority of papers are written in and accessed in English. About 30% of Indians can speak and comprehend English<sup>20</sup>, but the majority are not extremely proficient in it and instead speak and understand a variety of regional languages. India struggles to communicate with a large population due to linguistic difficulties and an imbalance in the provision of the fundamental right to knowledge, particularly about sexual and reproductive rights.

The burden of proof should not fall primarily on the disabled community; instead, those working in the sectors of reproductive health, rights, and justice must be included in the discussion and solutions to address the ableism that surrounds disability and sex. Many disability rights and justice organizations have battled for better sex education tools and curricula, for justice for survivors of sexual abuse, and to dispel the stigma attached to being a sexual person in a body that is disabled. On the other hand, organizations that support survivors are frequently unequipped to handle the requirements of survivors who have disabilities.

### **THE JUSTICE VERMA COMMITTEE REPORT**

The Justice Verma Committee report was the first to include specific protections for women with disabilities who are victims of sexual assault. It was written after consulting with disability rights organizations. These included permitting a sign language translator or special educator, having the police go to the victim's house to file an FIR, and videotaping the victim's statement. The Committee on CRPD<sup>21</sup> (United Nations Convention on the Rights of Persons with

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<sup>19</sup> Nayreen Daruwalla et al, 'Violence Against Women with Disability In India: A Qualitative Study' (2013) 3(3) <<https://doi.org/10.1177/21582440134991444>> accessed 05 February 2023

<sup>20</sup> Sahithi Aul, 'The Problem With The English Language In India' (*Forbes*, 6 November 2014) <<https://www.forbes.com/sites/realspin/2014/11/06/the-problem-with-the-english-language-in-india/?sh=74f879f0403e>> accessed 05 February 2023

<sup>21</sup> 'Convention on the Rights of Persons with Disabilities' (CRPD) <<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>> accessed 05 February 2023

Disabilities) made the following recommendations to the Indian Government in its final remarks in September 2019 among many others:

**The Committee advises the State party to take the following actions:**

- Adopt and implement national and state-level policies to identify, curtail, and eliminate all forms of abuse against individuals with disabilities, including abuse against women, girls, and boys with disabilities. Organizations of people with disabilities, especially those who advocate for women with disabilities, should be involved in this process to design procedures to identify cases of gender-based violence against women and girls with disabilities.
- Ensure that data on incidents of violence and exploitation, including gender-based violence against women and girls with disabilities and violence committed by intimate partners, is gathered by the National Crime Records Bureau and is segmented by sex, age, place of residence, relationship with the perpetrator, and disability.

**POINTS TO LOOK UPON TO SAFEGUARD THE INTERESTS OF DISABLED PEOPLE**

- Adequately implement laws and policies to safeguard rights in situations where women and girls with disabilities are the victims of sexual assault.
- Make sure that law enforcement, judicial, medical, and judicial staff members are adequately trained on the rights of survivors of sexual violence, including women and girls with disabilities. "Special educators" should be available to the police and the legal system so they can appropriately identify disabilities and offer help or other accommodations.
- Adopt and put into practice across all states and jurisdictions the medical-legal care standards and procedures established by the Ministry of Health and Family Welfare.<sup>22</sup> Make certain that all medical specialists have the appropriate training.

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<sup>22</sup> 'The Protection of Children from Sexual Offences Bill, 2011' (PRS) <<https://prsindia.org/billtrack/the-protection-of-children-from-sexual-offences-bill-2011>> accessed February 2023



- Gather information on sexual and gender-based violence and break it down by factors like age, gender, and disability to make sure that services are adequate and to help government policies and programs better serve the needs of women and girls with disabilities.
- Create a uniform compensation plan that will be applied to victims of sexual assault in all Indian states, including women and girls who are disabled. Awarded compensation should take into account the additional expenses incurred and the immediate need of victims with disabilities.

## CONCLUSION

Human nature is fundamentally based on sexuality, and everyone has the right – regardless of ability – to express their sexuality in a secure environment. To achieve this purpose, a thorough and deliberate effort must be made to dispel misconceptions and knowledge gaps. Access to adequate sex education in schools starting at a young age and empowerment with knowledge about consent should be made available to people with disabilities. Women who have disabilities do not make less valuable citizens. They have a right to the full force of the law, just like everyone else. Not just on paper, either. Nearly 80% of women with disabilities<sup>23</sup> are victims of violence, and they are four times more likely than other women to experience sexual violence, according to a report Disabled People's International (India) and its partners submitted to the Committee on the Elimination of Discrimination Against Women (CEDAW) in September 2013.

According to Addlakha's 2005 article<sup>24</sup>, 'A Training Manual for Professionals Working with Adolescents and Young People with Physical Disabilities,' not all people with disabilities need special sex education programs. These initiatives must provide students with the knowledge necessary to comprehend their bodies, what makes a proper, safe experience, and how to report

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<sup>23</sup> Ashwaq Masoodi, 'BSexual rights of disabled women' (*Mint*, 03 December 2014) <<https://www.livemint.com/Politics/FDPpol4lJ0pX037spUU1kL/Sexual-rights-of-disabled-women.html>> accessed 05 February 2023

<sup>24</sup> Renu Addlakha, 'Affliction and testimony: A reading of the diary of Parvati Devi' (2005) 12(1) *Indian Journal of Gender Studies* <[https://scholar.google.co.in/citations?view\\_op=view\\_citation&hl=en&user=WHUtO1MAAAAJ&citation\\_for\\_view=WHUtO1MAAAAJ:W7OEmFMyl1HYC](https://scholar.google.co.in/citations?view_op=view_citation&hl=en&user=WHUtO1MAAAAJ&citation_for_view=WHUtO1MAAAAJ:W7OEmFMyl1HYC)> accessed 05 February 2023

abuse and assault. To address the ableism around disability and sex, those in the reproductive health, rights, and justice areas must also be involved in the discussion and find answers; this responsibility should not fall only on the shoulders of the disabled community. Advocates, including those working in the fields of reproductive health, rights, and justice, must take immediate action to include people with disabilities in their campaigns.<sup>25</sup> Disability activists must also make sure that their campaigning takes into account their requirements in terms of reproductive health. For the initiative to truly be inclusive of and for everyone, both are required. The disability rights movement must also ensure that its efforts take into account the concerns of crippled immigrants, handicapped individuals who have been incarcerated or institutionalized, handicapped LGBTQ persons, and handicapped people of color. Learning to be more inclusive will help both movements.

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<sup>25</sup> *Eera v State (NCT of Delhi)* (2017) 15 SCC 133