



**SEXUAL AND GENDER-BASED VIOLENCE AGAINST  
WOMEN WITH DISABILITIES IN INDIA**  
**December 3, 2020**



International  
Day of  
Persons with  
Disabilities  
3 DECEMBER

*This resource is a collaboration between the  
[Shanta Memorial Rehabilitation Centre](#) and  
[The Prajnya Trust](#).*

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## THE EXPERIENCE OF VIOLENCE

As per the Census of India 2011, there are over 26.8 million persons with disabilities in India. This constitutes 2.21% of the population, among which about 15 million are men and 11.8 million are women.<sup>1</sup>

Women with disabilities are at the greatest risk of violence. Other intersecting factors—class, caste, ethnicity, rural/urban residence, low education, weak response systems—compound the impact of gender and disability.

Women with disabilities experience violence in the private and public spheres. They face disproportionate domestic violence and are confronted by inhuman, degrading and torturous treatment when detained in institutions. This situation is exacerbated in the presence of existing structural violence.

Gender-based violence against women with disabilities takes many unique forms. It includes violence that is perpetuated by stereotypes that infantilizes women, excludes or isolates them, and dehumanizes them.

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## **I. Violence against Women with Disabilities in the Home**

Gender-based violence within the home ranges from harassment and emotional abuse to rape and physical violence. During the pandemic, domestic violence against all women has increased significantly, particularly against women with disabilities (Shanta Memorial Rehabilitation Centre, 2020; Sightsavers and Rising Flame, 2020).

Domestic violence can be perpetuated not only by family members but also by personal carers who are very important to the woman's daily life. It could take the form of incest (WWDIN, 2014). This violence also extends to children with disabilities. It is, however, less likely to be investigated or persecuted, which means that abusers know it is easier to escape consequences even once the abuse is discovered (TARSHI, 2018).

Certain living arrangements violate the right of persons with disabilities to live independently and be included in the community; this can happen due to restrictions on personal autonomy and the control accorded to caregivers, who are in many cases perpetrators of violence.

Accessing information is a challenge for women with disabilities in most circumstances. Complaint mechanisms are not accessible to women with disabilities; for example, deaf women cannot use helplines and blind women cannot access *WhatsApp* message groups.

Many women with disabilities have no access to smartphones or even basic phones. According to COVID-19 data collected in the States of Odisha and Gujarat, only 2/100 in the former and 5/100 in the latter had access to a smartphone (Shanta Memorial Rehabilitation Centre, 2020). Most used phones belonging to a family member (usually a brother or the father) and could not raise complaints in instances of violence within the home.

Further, during the lockdown imposed owing to the pandemic, women with disabilities could not access One Stop Centres or other institutions that deal with Gender Based Violence (GBV) as they did not have access to any form of transport.

## **II. Violence in Public Spaces**

Women with disabilities who may need to leave the home due to violence become homeless. Women with psycho-social disabilities found wandering on the streets and without homes leaves them at high risk of sexual abuse.

During the lockdown, it was reported by a number of sources that personal carers had either not been able to reach such women or abandoned them. This left many women (with disabilities) without access to food, essential goods and medicines, and with no assistance to carry out basic daily activities such as bathing, cooking, and eating (United Nations Human Rights Commissioner 2020: 4; Shanta Memorial Rehabilitation Centre 2010; Sightsavers and Rising Flame 2020).

## **III. Violence in the Institutional Context**

### *Institutionalisation*

Women with psycho-social disabilities face violence in state- and privately-run care homes and institutions and this forced institutionalization deprives them of legal capacity [Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)] of the right to equal recognition before the law. It can amount to torture or ill-treatment (UN CRPD 2016: PARA 40).

In India, this violence begins with forced institutionalization of women with psycho-social or intellectual disabilities, often without any recourse to challenging the institutionalization. Disability organisations have documented many instances of forced institutionalization and abuse in institutions (WWDIN, 2014).

The abuse includes repeated forced treatment of women with disabilities, including coercing them to take medication and using electroconvulsive therapy (which can have many side effects), with only the consent of their guardians or the psychiatrist and often without women even being aware that they are receiving this treatment (Human Rights Watch, 2014). Cases of fraudulent admissions, over sedation, kidnapping, abandonment, sexual abuse, chaining, and indefinite incarceration and shock without

consent have been reported from mental institutions and rehabilitation centres (India: National CRPD Coalition-India towards Parallel Report 2019, Article 15 and 16). The majority of victims in these cases are women with disabilities (Human Rights Watch, 2014).

Educational institutions that house children and adults with intellectual and psycho-social disabilities have also witnessed violence against women and girls with disabilities. *Asha Kiran*, an institution in New Delhi, was found to house 243 inmates with mental health concerns. Of this, 180 were women and girls, many of whom had been sexually abused (Alkazi, 2016).

Physical and sexual violence in shelters for children with disabilities has often been reported in government facilities, with some states reporting cases of child kidnapping, murder and rape (India CRPD Alliance Report 2019, Article 15 and 16).

### *Educational Institutions*

Children, especially girls, are known to be at a higher risk for abuse partly because they are seen as 'easy victims' and the abuse is less likely to be investigated or persecuted (WWDIN 2019: 19).

They have no access to comprehensive sexuality education as they are considered asexual, especially girls with intellectual disabilities and those who are deaf-blind. (WWDIN, 2019: 20).

### *Healthcare Institutions*

Women and girls are disproportionately subject to forced sterilization. Sterilization of girls is based on the false assumption of their inability to parent or control their menstrual cycles (UN Special Rapporteur on Violence Against Women 2012; Misra, 2008). In case of women with psycho-social disabilities, forced abortion is allowed based on consent by their guardian (Medical Termination of Pregnancy Act 1971 Section 3(4) \_ a).

The degrading practice of the 'two finger test' to prove that rape has taken place continues despite the Health Ministry banning it (WWDIN: 2019: 28).

### Violence Due to Structural Inequality: Poverty

The majority of women with disabilities in India suffer from the triple challenges of being female, being disabled and being poor. The key welfare indicator of three meals a day year-round shows a clear difference, with households with persons with disabilities almost one quarter less likely to report a positive answer. A quarter of all households with persons with disabilities seldom manage three meals a day (World Bank, 2007: p. 14).

During the pandemic, it was highlighted that persons with disabilities faced food insecurity. Most women with disabilities could access food only once a day (Sightsavers and Rising Flame, 2020; Shanta Memorial Rehabilitation Centre, 2020).



## ACCESSING JUSTICE IN A DISCRIMINATORY LEGAL UNIVERSE

Despite rights provided in the Constitution, the Rights of Persons With Disabilities (RPWD) Act 2016, the Mental Health Act 2017 and the UN CRPD, violence against women with disabilities such as intellectual, psycho-social and the deaf-blind continues unabated. There are, however, many laws that identify persons with mental illness (psycho-social disabilities) as with an “unsound mind”. This results in the loss of many rights and consequently an increase in violence perpetuated against them as described below.

**Social Rights:** Family law in India denies women with disabilities the capacity to marry, to stay married, to adopt, to inherit, to terminate a pregnancy, to choose pregnancy, and to acquire new domicile (National CRPD Coalition-India towards Parallel Report 2019: 53). Under the Hindu Marriage Act (Section 5), the spouse of a woman with disability has a right to seek divorce on grounds of “unsound mind”. Many women cannot contest this in court and can become victims of fake cases filed by men. In the family court in Pune, 85% of divorce cases were filed by husbands who alleged that their spouse was mentally ill. Medical evidence of mental illness was presented in only 36% of cases (Pathare, 2012).

**Economic Rights:** For women designated as of “unsound mind”, a guardian is allowed to manage the person’s financial affairs. Banks do not allow these women to open individual accounts; they thus cannot file cases of violence in courts as they are usually financially dependent on the perpetrator.

**Political Rights:** According to the Representation of People Act, 1950 (Section 16), a person is disqualified for registration in an electoral roll if he/she is of “unsound mind” and stand so declared by a competent court. Therefore, the person thus disqualified cannot hold public offices under the Constitution, such as the posts of President, Vice-President, Ministers, and Members of Parliament and State Legislatures.



Persons of "unsound mind" are not allowed to form organisations or associations as per the Contract Act 1872, due to the condition of incapacity applied on the whole constituency.

As women with psycho-social disabilities are kept out of decision-making bodies such as the Parliament and the State Assembly and have no right to form organisations, violence continues against the group.



## **OBSERVED IN THE BREACH: THE NORMATIVE UNIVERSE**

### **The Rights of Persons with Disabilities Act, 2016**

3.1: The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

4.1: The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

4.2: The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.

### **Convention on the Rights of Persons with Disabilities (CRPD)**

Article 6.1: 1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

Article 10: States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Article 15.1: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

## *Article 16*

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

*Article 17:* Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

*Article 19:* States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.



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