

# RIGHTS OF WOMEN WITH DISABILITIES UNDER INDIAN LEGISLATIONS

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*The Indian legislative framework related to disability has been significantly transformed after the enactment of the Rights of Persons with Disabilities Act, 2017 (RPD Act) and the Mental Healthcare Act, 2017 (MH Act). The RPD Act adopt a “twin track” approach by incorporating specific provisions for women with disability while also addressing their vulnerabilities in the context of discrimination, social security, healthcare, and sexual offences. This article unpacks the rights of women with disabilities (WWD) to equality and non-discrimination and all its dimensions. It examines the extent to which the legislations recognize multiple and intersecting discrimination that WWD experience, as well as horizontal discrimination, and identifies legal provisions that can potentially facilitate de facto equality for WWD. It analyzes the extent of compliance with the guarantees relevant to WWD under the UN Convention on the Rights of Persons with Disabilities, 2008 (‘UNCPRD’).*

*Although research has established the vulnerability of WWD to violence, it is argued that the RPD Act and the MH Act do not expressly consider the gender-based aspect of violence. The*

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*article explains the procedural safeguards for victims with disability in legislations relevant to sexual offences such as the Protection of Children from Sexual Offences Act, 2012 and the Code of Criminal Procedure, 1973. It also examines the coverage of reproductive rights of WWD under the UNCPRD and domestic laws and their treatment of forced sterilizations. Finally, it outlines the possibilities and limitations of the Indian legal framework in advancing the rights of WWDs.*

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## I. INTRODUCTION

Women and girls with disabilities in India constitute 44% of the total population with disabilities.<sup>1</sup> While equal access of persons with disabilities to rights and services remains a challenge in India, women with disabilities encounter additional prejudices, discrimination, neglect, violence, and exclusion<sup>2</sup> that hinders their enjoyment of rights. Of the children with disabilities between 5-19 years attending an educational institution, females constitute 43%.<sup>3</sup> According to the Census of 2011, women with disabilities constituted nearly 54% of the ‘illiterate’ disabled population in India.<sup>4</sup> Only 23% of women with disabilities are working as opposed to 47% of men with disabilities.<sup>5</sup> A Human Rights Watch study based on visits to twenty four mental hospitals and State residential care

<sup>1</sup> Percentages have been calculated based on *Distribution of disabled by type of disability, sex, literacy status and residence – 2011*, [http://www.censusindia.gov.in/2011census/population\\_enumeration.html](http://www.censusindia.gov.in/2011census/population_enumeration.html).

<sup>2</sup> WWD India Network, “Special Chapter 1a — Women with Disabilities in India”, p. 118, <https://womenenabled.org/pdfs/mapping/Women%20with%20Disabilities%20in%20India.pdf>.

<sup>3</sup> Social Statistics Division, Ministry of Statistics and Programme Implementation, Government of India, *Disabled Persons in India – A Statistical Profile 2016*, 25 (2016), [http://mospi.nic.in/sites/default/files/publication\\_reports/Disabled\\_persons\\_in\\_India\\_2016.pdf](http://mospi.nic.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf).

<sup>4</sup> *Ibid*, 28.

<sup>5</sup> *Ibid*, 30.

facilities and over two hundred interviews with girls or women with psychosocial disabilities revealed institutional abuses, involuntary treatment, and forced institutionalization.<sup>6</sup>

Despite the disproportionate impact of gender and disability on women, they did not receive any legislative attention until the enactment of the Rights of Persons with Disabilities Act, 2016 ('RPD Act'). The erstwhile Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('PWD Act'), contained no specific references to women with disabilities ('WWDs'). The National Policy for Persons with Disabilities, 2006 ('National Policy') recognized the vulnerability of WWDs to exploitation and abuse, and proposed educational programmes, employment, rehabilitation services, housing support, and financial support for child-care.<sup>7</sup> However, these clauses largely remained on paper.

The legislative landscape has been significantly transformed by the RPD Act, which was enacted to give effect to India's obligations under the United Nations Convention on the Rights of Persons with Disabilities, 2008 ('UNCPRD').<sup>8</sup> Most identity-based legislations in India pertaining to women, children, or persons belonging to Scheduled Castes and Scheduled Tribes are fragmented responses to identity-based discrimination. However, the RPD Act is an omnibus legislation that addresses discrimination, violence, recognizes civil and political as well as economic, social, and cultural rights, provides for a monitoring authority, and a Special Court to try offences against persons with disabilities.<sup>9</sup>

Another legislation followed that addressed the rights of persons with mental illness. The Mental Healthcare Act, 2017 ('MH Act'), which reflects a rights-based approach towards persons with mental illness, provides "mental healthcare and services for persons with mental illness", and seeks "to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services".

With respect to the coverage of rights of WWDs, the RPD Act contains specific provisions on WWDs, and references to women or gender in provisions related to equality, social security, healthcare, and offences against PWDs.

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<sup>6</sup> "Treated Worse than Animals" *Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India*, Human Rights Watch Report, 4 (2014), [https://www.hrw.org/sites/default/files/report\\_pdf/india1214.pdf](https://www.hrw.org/sites/default/files/report_pdf/india1214.pdf).

<sup>7</sup> Ministry of Social Justice and Empowerment, National Policy for Persons with Disabilities, (2006), [http://disabilityaffairs.gov.in/upload/uploadfiles/files/NationalPolicyForPersonswithDisabilities\(1\).pdf](http://disabilityaffairs.gov.in/upload/uploadfiles/files/NationalPolicyForPersonswithDisabilities(1).pdf)

<sup>8</sup> Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.

<sup>9</sup> The reference to separate courts to try offences against children can be found in three separate legislations – Section 25, Commissions for Protection of Child Rights Act, 2005, Section 28, Protection of Children from Sexual Offences Act, and the Juvenile Justice (Care and Protection of Children), Act, 2015.

Dhanda explains how the “twin track” approach was arrived at during the deliberations on the UNCRPD:<sup>10</sup>

The reason for seeking mainstreaming is to underscore the overarching relevance of gender and the ubiquitous presence of discrimination. Special measures are suggested because without them it would be difficult to scale off the deep layers of gender discrimination. However, both approaches have yielded specific difficulties. Whilst mainstreaming has marginalised gender, special measures have ghettoised it. Finally, the Committee adopted what is termed the ‘twin track’ approach. In accordance with this approach, the CRPD, along with inducting the gender dimension in relevant articles, incorporated a dedicated article on women with disabilities.

The RPD Bill, 2014, did not contain a separate provision for WWDs or children, but this changed after the Standing Committee on Social Justice and Empowerment recommended it because of the “multiple discrimination” faced by women, vulnerability of children, and their distinct recognition under the UNCRPD.<sup>11</sup> Section 4 was thus included in the RPD Act, obligating the appropriate government and local authorities to take measures to ensure that women and children with disabilities enjoy their rights equally with others.

These two legislations are largely anchored in a rights-based approach to disability and have dismantled the medical and welfare approach to persons with disabilities. They reflect a “twin track”<sup>12</sup> approach by incorporating a specific provision for women as well as by including references in other provisions.<sup>13</sup> This article unpacks the rights of women with disabilities to equality and non-discrimination, protection from violence, and reproductive rights under these three legislations and examines the extent to which they comply with the guarantees under the UNCRPD. It set out the possibilities and limitations of the Indian legal framework in advancing the rights of WWDs.

<sup>10</sup> Amita Dhanda, *Sameness and Difference: Twin Track Empowerment for Women with Disabilities*, 15(2) INDIAN J. GENDER STUD., 209, 213 (2008), at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.840.834&rep=rep1&type=pdf>.

<sup>11</sup> Standing Committee on Social Justice and Empowerment (2014-2015) (Sixteenth Lok Sabha), Ministry of Social Justice And Empowerment, *The Rights Of Persons With Disabilities Bill, 2014 – Fifteenth Report*, ¶ 3.40 (May 2015).

<sup>12</sup> Prasanna Kumar Pincha, *Rights of Persons with Disabilities Act, 2016 – An Overview*, NASSCOM Foundation 9, <http://enabled.in/wp/wp-content/uploads/2017/03/NF-BOOK-FINAL-02.pdf>.

<sup>13</sup> *Rights of Persons with Disabilities Act, 2016*, No. 49, Sections 24(2), 24(3)(d), 25(3)(k), and 37, Acts of Parliament, 2016 (India) [hereinafter RPD Act].

## II. RIGHT OF WWD TO EQUALITY AND NON-DISCRIMINATION

### A. Overview

The Preamble of the RPD Act refers to 8 general principles under Article 3, UNCRPD, which are central to the full realization of the rights of women and girls with disabilities to equality and non-discrimination. They are:

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Section 3, RPD Act encapsulates the right to equality and prohibits discrimination based on disability. Section 3(1), RPD Act, obligates the appropriate government to “ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.” In a first, the RPD Act uses the expression “his or her” and does away with androgynous terms, but confines itself to the binaries of male and female.

Section 13(2), RPD Act, recognizes the right of PWD to enjoy legal capacity on an equal basis with other and to the “right to equal recognition everywhere as any other person before the law.” Section 20(1), RPD Act prohibits discrimination in employment in government establishments. The government does however, have the power to exempt an establishment from the application of this prohibition depending on the type of work being carried out. Government establishments should provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.<sup>14</sup> The rank of a person cannot be reduced or a person cannot be dispensed with if they acquire a disability during service.<sup>15</sup>

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<sup>14</sup> RPD Act, Section 20(2).

<sup>15</sup> RPD Act, Section 20(4).

Section 21, MH Act, recognises the right of a person with mental illness to be treated “as equal to persons with physical illness in the provision of all health-care.” The list of prohibited grounds of discrimination under the MH Act is fairly comprehensive. It includes gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability.<sup>16</sup> All persons are entitled to access mental healthcare and treatment that is affordable, of good quality, in sufficient quantity, geographically accessible, without discrimination based on the prohibited grounds.<sup>17</sup> Section 3(3)(b), MH Act prohibits mental illness being determined based on “non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person’s community.”

## **B. Unpacking “discrimination”**

The definition of discrimination under the RPD Act is the most comprehensive statutory definition of the term under an Indian legislation. It is based on the UNCRPD’s definition of “discrimination on the basis of disability”, which in turn was inspired by definition of “discrimination against women” under the UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW).

Section 2(h), RPD Act states:

“discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation. (emphasis added)

Article 3 of the UNCRPD includes non-discrimination, equality of opportunity, and equality between men and women as general principles of the Convention in absolute terms and does not provide for any exceptions. However, the expansive nature of this definition is whittled by Section 3(3), RPD Act which permits a discriminatory act or omission if it “is a proportionate means of achieving a legitimate aim.” Several disability groups had expressed their disapproval of the draft of this provision because it gave “unfettered power to the implementing authorities to discriminate against persons with disabilities, on the pretext of serving a “legitimate aim”.<sup>18</sup> Although assurance was given by the

<sup>16</sup> Mental Healthcare Act, 2017, No. 10, Section 21 (a), Acts of Parliament, 2017 (India) [hereinafter MH Act].

<sup>17</sup> MH Act, 2017, Section 18(2).

<sup>18</sup> On Passage of RPD Bill, Dec. 14, 2016, <https://www.mail-archive.com/accessindia@accessindia.org.in/msg110048.html>.

Minister for Social Justice and Empowerment in Parliament that rules would be made to ensure that the clause is not misused to the disadvantage of persons with disabilities,<sup>19</sup> the RPD Rules did not address this concern and nor did they contain any provisions specific to WWDs.

Facio and Morgan's analysis of discrimination in CEDAW serves as a useful guide for understanding the definition in the UNCPRD and RPD Act. According to them, the definition captures the different types (distinctions, exclusions, or restrictions) and degrees (partial – impairing; total – nullifying) of discrimination and prohibits direct (purpose) as well as indirect (effect) discrimination. It also recognizes the different stages at which discrimination can take place (recognition, enjoyment, or exercise of a right) and applies to all domains (any other field).<sup>20</sup>

### **(a) Reasonable Accommodation**

To promote equality and eliminate discrimination, States are mandated under Article 5(3), UNCPRD to take “all appropriate steps to ensure that reasonable accommodation is provided.” This entails “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”<sup>21</sup> The concept of reasonable accommodation is recognized in the RPD Act. Section 2(s), RPD Act, defines “reasonable accommodation” to mean “necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.” Denial of reasonable accommodation constitutes discrimination under the UNCPRD and the RPD Act.<sup>22</sup>

According to Mégret, the concept of reasonable accommodation lies at the “intersection of desirable and feasible” combining an absolute and relative approach to ensure that realization of rights by PWD is not eternally pushed under the guise of progressive realization<sup>23</sup> or made conditional on the limits of the State's economic capacity.<sup>24</sup> As is evident, it is not couched as a tempo-

<sup>19</sup> Shalini Nair, *Disabilities Bill passed: New conditions, revised quota and a few concerns*, The Indian Express (Dec. 15, 2016), <https://indianexpress.com/article/india/disability-bill-passed-parliament-revised-quota-conditions-reforms-4427364/>.

<sup>20</sup> Alda Facio & Martha I. Morgan, *Equity or Equality for Women? Understanding CEDAW's Equality Principles*, 60(5) ALABAMA L.REV.1133, 1142-44 (2008-9).

<sup>21</sup> UNCPRD, art. 2.

<sup>22</sup> UNCPRD, art. 2; RPD Act, Section 2(h).

<sup>23</sup> Frédéric Mégret, *The Disabilities Convention: Towards a Holistic Concept of Rights*, 12(2) INT'L J. HUM. RTS. 261, 270 (2008).

<sup>24</sup> Chapter VII: Discrimination of The PWD Act, 1995 required appropriate governments and local authorities and establishments in the transport sector to take special measures or ensure

rary special measure,<sup>25</sup> and States are obligated under the UNCPRD to provide reasonable accommodation to promote equality and non-discrimination especially in matters related to the deprivation of liberty, education, and work and employment.<sup>26</sup>

Under RPD Act, reasonable accommodation should be ensured in educational institutions funded or recognized by the government or local authority,<sup>27</sup> and in government establishments.<sup>28</sup> Access to any scheme, programme, facility, or service offered by the National Legal Services Authority and State Legal Services Authority should also be ensured.<sup>29</sup> This would require the State Legal Services Authorities, for instance, to ensure that WWDs who are victims of offences are able to access legal aid and compensation.

### ***(b) Horizontal versus Vertical Application***

Article 4(e), UNCPRD requires States Parties to “take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or enterprise.” It thus envisages horizontal application of the prohibition on discrimination.

On the other hand, the RPD Act provides only for a vertical application of the right to equality. Section 3(1), RPD Act, requires the appropriate Government to “ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.” By casting the obligation squarely on the government, private entities are not bound to adhere to this provision or provide reasonable accommodation.

## **C. Multiple and Intersecting Discrimination Overlooked**

The UNCPRD recognises the multiple discrimination that women and girls experience and requires States Parties to “take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.”<sup>30</sup> The Committee on the Rights of Persons with Disabilities in General Comment No.3 on women and girls with disabilities observed the debilitating impact of

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accessibility of public spaces, public buildings, and hospitals, etc., “within the limits of their economic capacity and development.” This also appeared in provisions related to social security (Sections 66(1) and 68), prevention of occurrence of disability (Section 25) and incentives for employers to provide 5% reservation for PWDs (Section 41).

<sup>25</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 4(1), Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>26</sup> UNCPRD, arts. 5(3), 14(2), 24(2)(c), 24(5), and 27(1)(i).

<sup>27</sup> RPD Act, Section 16(iii).

<sup>28</sup> RPD Act, Section 20(2).

<sup>29</sup> RPD Act, Section 12(3).

<sup>30</sup> UNCPRD, art. 6(1).

...multiple and intersecting<sup>31</sup> forms of discrimination against women and girls with disabilities, in particular with regard to: equal access to education, economic opportunities, social interaction and justice; equal recognition before the law; and the ability to participate in politics and to exercise control over their own lives across a range of contexts, for example with regard to health care, including sexual and reproductive health services, and to where and with whom they wish to live.<sup>32</sup>

The latent assumption in the RPD Act is that WWDs experience discrimination only on grounds of disability. For instance, caste and disability intersect in ways that make girls and women more vulnerable to sexual violence and exploitation. However, the combined effect of these identities is not addressed under the RPD Act, or the Protection of Children from Sexual Offences Act, 2012, or the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1993.

According to Pincha, the RPD Act addresses “intersectional concerns of gender and age with disability.”<sup>33</sup> However, in clubbing women and children with disabilities, the RPD Act does not fully capture the intersectional and multiple nature of discrimination experienced by both women and children with disabilities.

Women with multiple disabilities are also likely to face barriers in exercising their rights under the RPD Act. For instance, Section 20(3), RPD Act states that a promotion should not be denied to a person merely on the ground of disability. Whether the protection under the Act can be claimed by a woman who is discriminated against based on her sex and disability will have to be tested. For instance, a WWD may have experienced discrimination based on her status as a woman and the disability. If, however, her employer demonstrates that a man with disability has not been discriminated against, she will have no remedy in law for her claim of being denied a promotion because of discrimination based on her sex and disability.<sup>34</sup>

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<sup>31</sup> The Committee on the Rights of Persons with Disabilities (RPD Committee) has explained the terms multiple and intersection discrimination in General Comment No. 3 (2016), para 4(c):

“‘Multiple discrimination’ refers to a situation in which a person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated. ‘Intersectional discrimination’ refers to a situation where several grounds interact with each other at the same time in such a way as to be inseparable. Grounds for discrimination include age, disability, ethnic, indigenous, national or social origin, gender identity, political or other opinion, race, refugee, migrant or asylum seeker status, religion, sex and sexual orientation.”

<sup>32</sup> UN Committee on the Rights of Persons with Disabilities, *General Comment No. 3 (2016) on women and girls with disabilities*, Nov. 25, 2016, CRPD/C/GC/3.

<sup>33</sup> Pincha, *supra* note 12.

<sup>34</sup> This example is based on the explanation of intersectionality in Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, UNIVERSITY CHICAGO LEGAL F. 139 (1989).

The MH Act pays heed to intersectional discrimination by recognizing the right of a person with mental illness to be treated as equal to persons with physical illness and states that this right includes the prohibition on discrimination “on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability.”<sup>35</sup> This makes it the first legislation to do so and to also expressly recognise sexual orientation as a prohibited ground of discrimination. By doing so, it has undoubtedly enriched the discourse of equality and non-discrimination under the Indian legal framework.

#### D. Combating Stereotypes

WWDs in India continue to face barriers in education, employment, access to and enjoyment of rights. Unless the stigma and exclusion that results from stereotypes surrounding women with disabilities is addressed, substantive equality cannot be achieved. Dismantling of stereotypes - cultural and social - related to disability and PWDs is essential for the enjoyment of the right to equality and the prohibition on discrimination based on disability. Failure to take measures to dispel gender-based stereotypes, will hinder the exercise by WWDs of their right to legal capacity, reproductive rights, and several other rights equally with others, or could make them more vulnerable to violence. Further, the construction of “proportionate means” or “legitimate aim”, could easily be influenced by prejudicial notions about the abilities of WWDs.

Article 8(1)(b), UNCPRD obligates States Parties to take immediate, effective, and appropriate measures to “combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life”. This evinces the recognition of discrimination as a social problem.<sup>36</sup> Mégret hails the UNCPRD because it transcends the State-society divide by requiring the State to build awareness about PWD, combat stereotypes, prejudices, and harmful practices relating to PWD, and goes one step further by requiring the State to also highlight their positive contributions to society.<sup>37</sup> Mégret concludes that the UNCPRD provisions represent “a tidal attempt at engineering changes in attitude” and not just a “combative or repressive approach”.<sup>38</sup>

The Committee on RPD has explained stereotypes that are detrimental to women with disabilities such as:

being burdensome to others (i.e., they must be cared for, are a cause of hardship, an affliction and a responsibility, or require protection); being vulnerable (i.e., they are considered defenceless, dependent, reliant or unsafe); being victims (i.e., they are

<sup>35</sup> MH Act, Section 21(1)(a).

<sup>36</sup> Mégret, *supra* note 23, at 268.

<sup>37</sup> UNCPRD, arts. 8(1)(c) and 8(2)(ii).

<sup>38</sup> Mégret, *supra* note 23, at 268.

considered to be suffering, passive or helpless) or inferior (i.e., they are considered unable, inadequate, weak or worthless); having a sexual abnormality (e.g., they are stereotyped as asexual, inactive, overactive, incapable or sexually perverse); or being mystical or sinister (stereotyped as cursed, possessed by spirits, practitioners of witchcraft, harmful or bring either good or bad luck).<sup>39</sup>

A Human Rights Watch study found that women with disabilities, particularly those with psychosocial or intellectual disabilities are perceived as being “incapable, weak, and lack[ing] the capacity to make any meaningful decisions about their lives.”<sup>40</sup> Cases of sexual assault are rarely addressed due to this perception. Caretakers, doctors, the police, and other state institutions have no faith in the testimonies of women with psychosocial or intellectual disabilities. They are either disbelieved entirely, or dismissed as being unfit to identify the perpetrator or provide sound testimony.<sup>41</sup> Women with psychosocial or intellectual disabilities face further prejudice in healthcare institutions due to the impression that they are “unmanageable” and “dirty”.<sup>42</sup> Beliefs that women with disabilities cannot participate in society in any meaningful way are also prevalent – they are viewed as unmarriageable, unemployable, and unintelligent.<sup>43</sup>

While the RPD Act does not emulate the language of the UNCRPD, under Section 39, it requires the appropriate government to develop programmes and campaigns to “promote values of inclusion, tolerance, empathy and respect for diversity”, “foster respect for the decisions made by persons with disabilities on all matters related to family life, relationships, bearing and raising children”, and orient and sensitize people in educational institutions and in work settings about disability and the rights of persons with disabilities. Section 30(b) of the Mental Healthcare Act, 2017 requires the government to take measures to ensure that programmes to reduce stigma associated with mental illness are effectively designed, funded, and implemented.

The above provisions give ample scope to the government to ensure that harmful stereotypes affecting women with disabilities are addressed intensively through awareness-raising programmes in a variety of settings and through training of Panchayati Raj members, legislators, administrators, police officers, judges, and lawyers.<sup>44</sup> They also necessitate a re-examination of the Medical Termination of Pregnancy Act, 1971, which allows termination if the pregnancy poses a sub-

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<sup>39</sup> *Supra* note 32.

<sup>40</sup> *Supra* note 6.

<sup>41</sup> *Id.*, at 71.

<sup>42</sup> *Id.*, at 37.

<sup>43</sup> Nayreen Daruwalla, et al, *Violence Against Women with Disability In India: A Qualitative Study*, Sage Open J. (2013), <http://journals.sagepub.com/doi/pdf/10.1177/2158244013499144>.

<sup>44</sup> RPD Act, Section 47(1)(a).

stantial risk of the child being born with “physical or mental abnormalities as to be seriously handicapped.”<sup>45</sup>

### E. Operationalizing the positive dimension of right to equality

Article 6(2), UNCRPD enjoins States Parties to take positive measures “to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the Convention.” Mégret explains that the drafters of CRPD realized that a mere prohibition of discrimination would not suffice and thus, specified policy initiatives such as mainstreaming the concern for PWD, public awareness campaigns, training, building or adapting infrastructures, etc.<sup>46</sup> The CEDAW Committee has also stated that substantive equality cannot be achieved merely through legal and programmatic measures, and that special measures should be taken to address the structural causes of discrimination.<sup>47</sup>

Sections 24 and 37 of the RPD Act are examples of positive measures that also seek to promote de facto equality, especially for WWDs. Section 24(2) requires gender to be considered, among other factors, when social security schemes and programmes are developed. Section 24(3)(d) expressly requires the schemes to provide “support to women with disability for livelihood and for upbringing of their children”. Section 37 requires the appropriate government and local authorities to develop special schemes and development programmes for PWDs. Clause (b) requires them to accord priority to women with benchmark disabilities,<sup>48</sup> while framing schemes to provide 5% reservation in allotment of agricultural land and housing, and poverty alleviation and development schemes.

Similarly, Section 18(7), MH Act, 2017, entitles persons with mental illness below the poverty line (BPL) to free mental health treatment and services at establishments run, funded, or designated by the government. This provision can benefit large number of women who are homeless, found wandering, or thrown out of their house because of their illness. When Sruti Disability Rights Centre undertook a rehabilitation programme covering seven hundred and fifty homeless women with mental illness in Kolkata, it was found that 45% were from economically well-off families. Some of these women lost their ways and some

<sup>45</sup> Medical Termination of Pregnancy Act, 1971, No. 34, Section 3(2)(b)(ii), Acts of Parliament, 1971 (India).

<sup>46</sup> Mégret, *supra* note 23, at 273.

<sup>47</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 of Discrimination against Women, on temporary special measures, 2004, ¶¶ 8-10.

<sup>48</sup> Section 2(p), RPD Act defines “person with benchmark disability” to mean “a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.”

were disowned by their families. Several of them left home because of domestic violence and then faced further violence in the larger community. These women continue to be the responsibility of some NGOs and no efforts have been made by the government to ensure care for this vulnerable population. It is important that such women are provided free treatment even if they do not technically fall within the ambit of the BPL category because their family income is above the prescribed threshold.

### III. VIOLENCE AGAINST WOMEN WITH DISABILITIES

Studies have shown that children and adults with disabilities are more likely to be victims of violence than those without a disability.<sup>49</sup> Disaggregated crime data, however, is not available in India, to indicate the proportion of WWDs subjected to violence. Besides being subjected to physical violence which is considered “routine”, WWDs experience emotional and verbal abuse with lasting psychological impact.<sup>50</sup> Women with intellectual disabilities are commonly subjected to forced sterilizations and termination of pregnancy.<sup>51</sup> Their economic independence is often curtailed by denying them the autonomy to operate bank account, acquire, sell, or manage property.<sup>52</sup> Erosion of privacy and dignity is rampant within institutions.<sup>53</sup> They also face sexual violence, at home as well as in public institutions.<sup>54</sup>

Studies have also found that the neglect, verbal, and emotional abuse faced by women with disabilities have led to self-blame, and adverse effects on self-esteem and self-perception, extending in some cases to attempted suicides.<sup>55</sup> Feelings of isolation and helplessness were also reported. Moreover, structural violence in the form of unequal access to employment opportunities, discriminatory attitudes in the workplace, and institutional discrimination by State and private entities exacerbate the psychological impact faced by these women.<sup>56</sup>

#### A. Protection from abuse, violence, and exploitation

Article 16, UNCRPD requires States Parties to take positive measures to protect PWDs from exploitation, violence and abuse, “both within and outside the

<sup>49</sup> World Health Organisation, Violence against adults and children with disabilities, <http://www.who.int/disabilities/violence/en/>.

<sup>50</sup> Nayreen Daruwalla, Shruti Chakravarthy, et al, “Violence Against Women With Disability In India: A Qualitative Study” available at <http://journals.sagepub.com/doi/pdf/10.1177/2158244013499144>.

<sup>51</sup> Women with Disabilities India Network, *Report on Violence against Women with Disabilities in India*, [http://www.wwdin.org/pdf/Report%20by%20WWDIN%20India%20Network%20for%20SRVAW\\_22nd%20April%202013.pdf](http://www.wwdin.org/pdf/Report%20by%20WWDIN%20India%20Network%20for%20SRVAW_22nd%20April%202013.pdf).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Daruwalla, *supra* note 43.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

home”, including their gender-based aspects. This provision exemplifies the transcendence of the public-private divide in the UNCRPD.<sup>57</sup>

The RPD Act fails to expressly recognize women’s vulnerability to violence. Section 7(1), RPD Act is a generic provision that enjoins the appropriate government to take measures to protect PWDs from and prevent abuse, violence and exploitation. The government is required to take cognizance and provide legal remedies against such incidents, take steps to avoid them, prescribe reporting procedures, take steps to rescue, protect and rehabilitate victims, and create public awareness.<sup>58</sup> However, no such procedures have been outlined in the Central RPD Rules, 2017 and nor is there any Action Plan in place to prevent violence against women with disabilities.

Although Section 7 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, violence or exploitation.<sup>59</sup> The police or an organization working for PWDs can also be directed to rescue the victim and provide safe custody or rehabilitation. An order to provide protective custody can be provided based on the wishes of the PWD. In addition to this provision, Section 6, RPD Act and Section 20(2), MH Act provide for protection from cruel, inhuman or degrading treatment. The provisions of the Protection of Women from Domestic Violence Act, 2005 can also be pressed into service to seek reliefs against physical, sexual, emotional, economic, and verbal abuse by an adult male person who is or has been in a domestic relationship with a WWD.

## **B. Protection from Sexual Offences and Procedural Safeguards**

The UNCRPD does not make any express reference to sexual violence in Article 16, but does allude to “gender-based aspects” of exploitation, violence, and abuse. Apart from the RPD Act, the Protection of Children from Sexual Offences Act, 2012 (‘POCSO Act’), a special legislation enacted to protect children from sexual assault, sexual harassment, and pornography, specifically recognizes the vulnerability of children with disabilities to sexual violence. The Criminal Law Amendment Act, 2013, passed in the wake of the Delhi gang-rape case also introduced several changes to the substantive, procedural, and evidence law relevant to sexual offences against women many of which have a bearing on women with disabilities. Disability is considered an aggravating factor for offences committed under the Juvenile Justice (Care and Protection of Children) Act, 2015 (‘JJ Act, 2015’). Under Section 85, JJ Act, 2015, if offences under the

<sup>57</sup> Mégret, *supra* note 23, at 267.

<sup>58</sup> RPD Act, Section 7(1).

<sup>59</sup> RPD Act, Section 7(3).

Act are committed against children certified to be disabled by a medical practitioner, they will attract twice the penalty provided for the offence.<sup>60</sup>

The relevant provisions in the Indian Penal Code, 1860 ('IPC') and the POCSO Act, 2012 are as follows:

- Commission of rape of a woman "suffering from mental or physical disability" constitutes aggravated rape under Section 376(2)(l) of the IPC.
- If the woman is in a permanent vegetative state because of rape or aggravated rape, it is an offence punishable under Section 376-A, IPC with a minimum term of 20 years rigorous imprisonment which can extend to life imprisonment, i.e., imprisonment for the remainder of the person's natural life, or death. This provision was introduced through the Criminal Law (Amendment) Act, 2013.
- Penetrative sexual assault or sexual assault by "taking advantage of a child's mental or physical disability" constitutes aggravated penetrative sexual assault under Section 5(k), POCSO Act and aggravated sexual assault under Section 9(k), POCSO Act, respectively.
- If the penetrative sexual assault or sexual assault results in physical incapacitation, mental illness, or impairment which temporarily or permanently renders the child unable to perform regular tasks, it would amount to aggravated penetrative sexual assault under Section 5(j)(i) and aggravated sexual assault under Section 9(j)(i) of the POCSO Act.

Penal provisions in the RPD Act recognize specifically certain sexual offences against WWDs. Section 92 criminalizes:

- assault or use of force on a WWD with the intention to outrage her modesty;<sup>61</sup>
- sexual exploitation of a woman or child with disability by a person in a position to dominate their will;<sup>62</sup>
- performing, conducting or directing any medical procedure that leads or is likely to lead to a termination of pregnancy of a WWD without her express consent. Termination done in cases of severe disability and based on the opinion of a registered medical practitioner and consent of the guardian of the WWD are exempt.<sup>63</sup>

The above offences are punishable with fine and a minimum term of 6 months imprisonment which can extend to 5 years.

<sup>60</sup> Since the JJ Act, 2015, came into force before the RPD Act, 2016, it refers to Section 2(i), PWD Act, 1995 for the meaning of "disability".

<sup>61</sup> RPD Act, Section 92(b).

<sup>62</sup> RPD Act, Section 92(d).

<sup>63</sup> RPD Act, Section 92(f).

The MH Act does not separately recognize the vulnerability of women with mental illness to violence. Section 20(2)(k) provides the right of a person with mental illness living in a mental health establishment, “to be protected from all forms of physical, verbal, emotional and sexual abuse.”

### **(a) Procedural Safeguards**

The Criminal Law (Amendment) Act, 2013 introduced several procedural changes relevant to sexual offences. If a sexual offence is allegedly committed against a woman who is temporarily or permanently, mentally or physically disabled, the police should record the information at the person’s residence or at a convenient place of the woman’s choice.<sup>64</sup> An interpreter or special educator should be present during the recording of the information and the recording should be videographed. A woman or a person with mental or physical disability cannot be summoned to a police station.<sup>65</sup>

Under the POCSO Act, 2012, the police, Magistrate, and Special Court can take the assistance of a special educator or person familiar with the manner of communication of the child with physical or mental disability, or a qualified and experienced expert to record the child’s statement or evidence.<sup>66</sup> The inclusion of a person familiar with the child’s manner of communication was deliberate, in light of the absence of standardized special education facilities and the possibility that children may not be able to communicate through any expert or special educator.<sup>67</sup>

The statement of a person who is temporarily or permanently, mentally or physically disabled should be recorded by a Magistrate with the assistance of an interpreter or a special educator and should be videographed.<sup>68</sup> In a significant departure from standard criminal procedures, this statement has to be considered as a statement in lieu of the examination-in-chief and the woman or girl with disability can be cross-examined on its basis.<sup>69</sup> In other words, the statement will not have to be repeated before the trial court. However, the implementation of this provision has been tardy as many courts lack audio-visual facilities or the capacity to use such equipment.<sup>70</sup>

<sup>64</sup> Code of Criminal Procedure, 1973, No. 2 of 1974, Section 154(1) second proviso.

<sup>65</sup> Code of Criminal Procedure, 1973, No. 2 of 1974, Section 160(1) proviso.

<sup>66</sup> Protection of Children from Sexual Offences Act, 2012, No. 32, Sections 26(3) and 38(2), Acts of Parliament, (2012) (India).

<sup>67</sup> Department-related Parliamentary Standing Committee on Human Resource Development, Two Hundred Fortieth Report on the Protection of Children from Sexual Offences Bill, 2011 ¶13.5 (2011), <http://www.prsindia.org/uploads/media/Protection%20of%20children/SCR%20Protection%20of%20Children%20from%20Sexual%20Offences%20Bill%202011.pdf>.

<sup>68</sup> Code of Criminal Procedure, 1973, No. 2 of 1974, Section 164(5-A)(a) proviso.

<sup>69</sup> Code of Criminal Procedure, 1973, No. 2 of 1974, Section 164(5-A)(b).

<sup>70</sup> This is based on Swagata Raha’s interactions with Magistrates and judges of Special Courts in Gujarat and Jharkhand during capacity building programmes on the POCSO Act.

However, the implementation of the provisions under the POCSO Act relevant to disability, has revealed that the courtrooms are not accessible to persons with disabilities, that police often fail to include the aggravated provisions in the charge-sheet, and that there are no district-level databases of special educators or experts who can assist with the recording of the statement of a child with disability.<sup>71</sup> Even where assistance is available, the victim's statement is not always considered reliable. In a case of sixteen-year-old girl with 60% mental retardation, a Special Court in Maharashtra refused to accept her statement which had been recorded with assistance from the Head Master with twenty two years' experience of working in a school for mentally retarded.<sup>72</sup> Since she had spent only 1 year in the school, and signs of expression could not be learnt in such a short period, the Special Court held that it could not rely solely on her statement to convict the accused. In another case, the testimony of a seventeen-year-old girl with 80% "mental disability" was considered unreliable because she had not mentioned details of the abuse to the police and there were no injuries on her body or genitals. The Special Court in Maharashtra concluded, "[h]ad there been grain of truth in the evidence of victim girl that accused has sexually assaulted her, then there should be at least some tenderness on breasts and genitals of victim girl, when she claimed that accused has pressed her breasts and inserted his penis in her vagina."<sup>73</sup> The judgment is silent on whether any special expert was engaged to facilitate the recording of the child's testimony.

Owing to the child-friendly nature of the provisions in the POCSO Act, a parent of thirty eight-year-old woman with cerebral palsy who had been raped and whose mental age was around 6-8 years appealed to the Supreme Court, seeking trial by a Special Court under the POCSO Act. The question before the Supreme Court in *Eera v. State (NCT of Delhi)*,<sup>74</sup> was whether the term "child" under the POCSO Act, 2012 would include within its ambit persons above eighteen years whose mental age is below eighteen years. The objective was primarily that the woman be examined in a comfortable and friendly atmosphere, and the proceedings be videographed. The Supreme Court examined the objectives of the POCSO Act and principles of statutory interpretation and concluded that "age" cannot be stretched to include mental age as that would amount to a transgression of judicial powers. It held, "Parliament has felt it appropriate that the definition of the term "age" by chronological age or biological age to be the safest yardstick than referring to a person having mental retardation."

<sup>71</sup> Anuroopa Giliyal, *Chapter 10: Children with Disabilities under the POCSO Act, 2012*, in CCL-NLSIU, *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues*, 145, 155 (2018) <https://www.nls.ac.in/ccl/jjdocuments/posco2012spcourts.pdf>.

<sup>72</sup> *State v. Mohd. Ayub*, Spl. (POCSO) Case No. 15 of 2013, 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.

<sup>73</sup> *State v. Mangesh*, Special Case (Under POCSO Act) No. 17 of 2013, decided on 20-9-2014 cited in CCL-NLSIU, *Study on the Working of Special Courts under the POCSO Act, 2012 in Maharashtra* (2017), 32.

<sup>74</sup> *Eera v. State (NCT of Delhi)*, (2017) 15 SCC 133.

The solution would lie in ensuring that criminal trial procedures are modified to suit the needs of women with mental retardation instead of conflating them with children.

## IV. REPRODUCTIVE RIGHTS

### A. Coverage

The report of the Special Rapporteur on the Rights of Persons with Disabilities on Sexual and reproductive health and rights of girls and young women with disabilities<sup>75</sup> elaborates the components of reproductive rights:

Sexual and reproductive health and rights entail a set of freedoms and entitlements. They encompass the right to have control over decisions concerning sexuality and reproduction without discrimination, coercion and violence, and the right to access a range of sexual and reproductive health facilities, services, goods and information. Sexual and reproductive health services include, inter alia, contraceptive counselling, information, education, communication and services; education and services for prenatal care, safe delivery and post-natal care; the prevention and appropriate treatment of infertility; safe abortion services; the prevention and treatment of sexually transmitted and reproductive tract infections; and sexual and reproductive health information, education and counselling.

The UNCRPD does not have a dedicated provision on reproductive rights and marginally addresses it in the provisions related to health and respect for home and the family. Article 25, UNCRC requires States Parties to:

provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes.

The right of persons with disabilities to access reproductive and family planning education and decide freely and responsibly about number and spacing of children is recognized in Article 23(1)(b), UNCRPD. According to Ruiz, although the UNCRPD dismantled the medical model of disability, the Committee on RPD ('CRPD') has adopted a protectionist and medical view of sexual and reproductive rights by focusing on violence and force, and restrictive solutions such as

<sup>75</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the rights of persons with disabilities*, July 14, 2017, A/72/133, ¶ 11.

sex education and medical information. This view is based on an analysis of 40 Concluding Observations by the CRPD. Ruiz states:

When addressing issues of sexuality, the concerns of the Committee have been mostly narrowed to worries about health rather than conceived as a way of advancing sexual desire, freedom, and self-determination. For instance, it has referred to sexual and reproductive rights in 35 concluding observations, but in 20 of these, it has framed its concerns on sexual and reproductive rights within Article 25 – Health. This shows the extent to which sexuality continues to fall under the medical model.<sup>76</sup>

Ruiz concludes that the CRPD has endorsed “prejudices that equate disability with incapacity, incompetence, impotence, and asexuality. It has also failed to acknowledge the experiences of persons with disabilities with different sexual orientations and gender identities.”<sup>77</sup>

Ruiz’s criticism may also apply to the RPD Act, as it couches reproductive rights within the health and information paradigm. Section 10(1), RPD Act obligates the appropriate governments to ensure that appropriate information about reproductive and family planning is made accessible to persons with disabilities. Under Section 25(2)(k), the appropriate government should ensure that measures, schemes, and programmes to promote healthcare and prevent disabilities, include sexual and reproductive healthcare for women with disability. Section 39(2)(c), RPD Act is a progressive provision that requires the appropriate government to undertake campaign and sensitization programmes to “foster respect for the decisions made by persons with disabilities on all matters related to family life, relationships, bearing and raising children.”

## **B. Treatment of Forced Sterilizations and Pregnancies**

Reproductive rights intersect with the right to exercise legal capacity and the protection from violence, especially in the context of bearing and raising children. Article 23(1)(c), UNCRPD emphasizes that PWDs including children, “retain their fertility on an equal basis with others”, but does not make any reference to forced sterilizations. The Committee on the Rights of Persons with Disabilities in General Comment No.3 (2016) on women and girls with disabilities,<sup>78</sup> made observations about the pervasive violation of the right to legal capacity of women with psychosocial or intellectual disabilities. It stated:

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<sup>76</sup> Felipe Jaramillo Ruiz, *The Committee on the Rights of Persons with Disabilities and its take on sexuality, Reproductive Healthcare Matters*, 25 *REPRODUCTIVE HEALTH MATTERS* 92, 96 (2017).

<sup>77</sup> *Ibid.*

<sup>78</sup> UN Committee on the Rights of Persons with Disabilities, *General Comment No. 3, Article 6: Women and girls with disabilities*, Sept. 2, 2016, CRPD/C/GC/3.

Forced contraception and sterilization can also result in sexual violence without the consequence of pregnancy, especially for women with psychosocial or intellectual disabilities, women in psychiatric or other institutions and women in custody. Therefore, it is particularly important to reaffirm that the legal capacity of women with disabilities should be recognized on an equal basis with that of others and that women with disabilities have the right to found a family and be provided with appropriate assistance to raise their children.

Section 10(2), RPD Act protects PWDs from being subjected to medical procedures which lead to infertility without their informed consent. Despite rampant sterilization of women and girls, the RPD Act does not specifically recognize their vulnerability. No remedy is specifically provided for a violation of this provision. Section 89, which prescribes a fine or violation of any provision of the Act, Rules, or regulations would apply, but a fine which may extend to Rs 10,000 is not proportionate to the gross violation of the right to bodily integrity and human dignity, and the irreversible effects of forced sterilizations.

Under the MH Act, sterilization of men or women is prohibited if it “is intended as a treatment for mental illness.”<sup>79</sup> First contravention of provisions of the MH Act will attract imprisonment for a maximum term of 6 months or fine which can extend to Rs 10,000 or both and subsequent contraventions are punishable with imprisonment which can extend to 2 years or a minimum fine of Rs 50,000 which can extend to Rs 5 lakh or both.<sup>80</sup> This is a restrictive provision as it is possible that sterilization may be carried out for convenience and non-medical reasons. For instance, justifications offered by the State in the infamous hysterectomies on women with intellectual disabilities in Sassoon General Hospital, Pune in 1994, were dangers of pregnancies due to sexual assault and the problems in maintaining menstrual hygiene.<sup>81</sup>

In *Suchita Srivastava v. Chandigarh Admn.*,<sup>82</sup> a case predating the RPD Act, the Supreme Court set aside the High Court’s decision to terminate the pregnancy of a woman with mental retardation without her consent. The woman had become pregnant because of rape while living in a government-run welfare institution. The Supreme Court held that it was not in her best interest to terminate considering the late stage of her pregnancy and her willingness to continue with

<sup>79</sup> MH Act, 2017, Section 95(1)(c).

<sup>80</sup> MH Act, 2017, Section 108.

<sup>81</sup> Swagata Raha, *Protection women with disabilities from violence*, Infochange News & Features (May 2009), <http://infochangeindia.org/component/content/article/64-disabilities/background-er/7742-protecting-women-with-disabilities-from-violence>; Robin Abreu, *Hysterectomies on mentally retarded women rocks Pune*, India Today (Feb. 28, 1994), <https://www.indiatoday.in/magazine/indiascope/story/19940228-hysterectomies-on-mentally-retarded-women-rocks-pune-810146-1994-02-28>.

<sup>82</sup> (2009) 9 SCC 1.

the pregnancy. In support of its decision, the Supreme Court relied on the UN Declaration on the Rights of Mentally Retarded Persons, 1971 and UNCRRPD, which had been ratified by India. The court emphasized “that persons who are found to be in a condition of borderline, mild or moderate mental retardation are capable of being good parents.” It regarded forced sterilizations and abortions of persons with mental retardation as being “anti-democratic and violative of the guarantee of ‘equal protection before the law’ as laid down in Article 14 of the Constitution.” Further, it opined that “the language of the MTP Act clearly respects the personal autonomy of mentally retarded persons who are above the age of majority.” Since the conditions stipulated for termination had not been satisfied in the case, the termination could not be ordered. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities (constituted under the similarly named 1999 Act) submitted an affidavit signifying its willingness to “look after the interests of the woman in question which will include assistance with childcare” and has been doing so till date.

Unlike the Suchita Srivastava case, at the ground level, we find several disabled women coming from lower economic backgrounds, mostly from rural areas, who become pregnant as consequence of rape, for whom bearing and raising a child is difficult without any State support.<sup>83</sup> Disappointingly, the RPD Act does not obligate the State Government to provide any assistance to disabled women who become mothers.

## V. CONCLUSION

The RPD Act and the MH Act have in different ways enriched the legislative narrative of equality and non-discrimination. They have rendered visible and validated the discriminatory experiences of persons with disabilities and persons with mental illness. These legislations have also recognised in varying degrees, the impact of disability on women. By providing a tailored framework that articulates rights, prohibits discrimination, provides remedies, and creates or empowers authorities to respond to violations, they have the potential to transform the realities of women with disabilities and mental illness.

Although the RPD Act does not adequately capture the intersectional nature of discrimination, the effective implementation of positive measures under the legislation can lead to structural changes that dismantle the barriers women face in equal access to their entitlements. Its effective implementation can lead to the socio-economic empowerment of women with disabilities. At the same time, monitoring systems and a safe and accessible complaints mechanism is necessary to ensure that WWDs can exercise their legal capacity and seek remedy for violation of their rights. Unless the Central Government and state Governments are pushed to develop a concrete action plan, these provisions will remain on paper.

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<sup>83</sup> This is based on Shampa Sengupta’s direct experience of working with women with intellectual disabilities and their families through Sruti Disability Rights Centre, Kolkata.

Efforts need to be intensified to tackle the harmful stereotypes and prejudices against women with disabilities through not just education and awareness campaigns, but also through a concerted scrutiny of legislations and schemes that endorse such stereotypes. For instance, schemes proposed by state Governments that offer monetary incentives for marriage with a person with disability<sup>84</sup> need to be reviewed to assess whether they contribute to the perception of them being burdensome.

Sexual and reproductive rights have been constructed in the protectionist frame and neither the UNPRD or the RPD Act reflect the positive dimension of this right. It remains to be seen whether the Indian judiciary will adopt a positive interpretation of sexual and reproductive rights of women with disabilities.

Although violence against women with disabilities, particularly sexual violence, has been covered in criminal legislations as well as the RPD Act, it is important that studies be carried out to examine the extent to which the disability-friendly procedures prescribed in the Code of Criminal Procedure, 1973 are being implemented. Challenges that the police and courts face in dealing with women with disabilities, and the experiences of women with disabilities in the criminal justice system also need to be mapped to identify solutions.

It is also important that the Code of Criminal Procedure, 1973, be suitable modified to respond to all forms of violence against women with disability and not just sexual violence. Some of the procedures contained in the POCSO Act such as creation of a comfortable atmosphere, prohibition on direct questions by a defence lawyer and prosecutor, frequent breaks, prevention of exposure to the accused, and the possibility of recording evidence in a place other than the court need to be incorporated in trials of offences against women with mental retardation.

The legislative framework has the potential to significantly transform the lived realities of WWDs provided implementation of positive measures is prioritized by the Central Government and state Governments. Its operationalization will also depend on the initiatives taken by WWDs, disability groups, and civil society to contest infringements of rights and seek redress.

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<sup>84</sup> Sandeep Ashar, *Wed a disabled person, get Rs 50,000 from state*, The Times of India, Oct. 9, 2010, <https://timesofindia.indiatimes.com/city/mumbai/Wed-a-disabled-person-get-Rs-50000-from-state/articleshow/6716332.cms>; TNN, *Marry a disabled in MP & get 2 lakh as gift*, The Times of India, Nov. 9, 2017, <https://timesofindia.indiatimes.com/city/bhopal/marry-a-disabled-in-mp-amp-get-2-lakh-as-gift/articleshow/61573269.cms>.