



## **Gender Discrimination, Disability and Legal Reforms: Revisiting the Evidence**

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**Abstract:** *This article intends to discuss how gender affects women's and men's experience of disability and their basic human rights. It discusses at length about the Feminist Disability Study and its relation with the feminist study to find out a clear conception about the gender disability. This article arduously searches whether the Issues of disability has any linkage with the theory of right and exclusions or it is a kind of cultural interpretation of human variation. Disabled woman suffers double discrimination which is quite different from the experiences of a disabled man. This article intends to critically scan the whole International legal mechanism and the Indian legal system relating to the disability of women and also suggests how to improve the situation. The approach of the article is primarily doctrinal based on an analysis of comparative legal structure, policies, governmental documents, judicial pronouncements, etc. This article advocates in favour of collaborative governance to address the issue of Women's disability properly.*

**Keywords:** *feminist; disabled woman; human right; protective discrimination; development*

### **I. INTRODUCTION**

There exists a very proximate and close relationship between feminist studies and feminist disability studies. As feminist study critically discusses with the gender issues as a whole similarly feminist disability studies, also want to axe the very stereotype attitude of the society about people with disabilities.<sup>1</sup> Feminist disability studies intend to understand the issues of disability in the context of rights and exclusions. It argues that disability is neither inherent inferiority

nor related to any mental or physical ailment or any kind of deformation, rather it is a kind of cultural interpretation of human variation.<sup>2</sup> They consider disability as a socially constructed identity to regulate the issues like caretaking and caregiving, health v/s normalcy, reproductive rights, rights related to abortion, property issues, protection V/s exclusion, etc.

The set idea of the society the construed disabled as a group and portrays a negative image of them whereby they are

<sup>1</sup> Kim Q. Hall, 'Feminism, Disability, and Embodiment', (2020) 14(3) *NWSA Journal*, 10.

<sup>2</sup> Rosemarie Garland-Thomson, 'Feminist Disability Studies', (2005) 30(2, Winter) *Signs*, 1557.

ignored and deprived of the good of the society. In various studies, though the very least study has taken place in the above field, it has been found that the conditions of disabled women are considerably worse off in comparison with the disabled men.<sup>3</sup> The way the issue of gender discrimination works in the matter of Man and Woman, in the same way, it works in the matter of disability. Biological differences based on sex are natural but the role that has been assigned based on gender is not natural. Gender relates to the social or cultural upbringing of women. Biological differences do not establish that women can find there all satisfaction or completion of personality in being wives and mothers. Society and religion compel women to succumb to their 'natural' morality. On the other hand, the law also coerces her to accept the status of inferiority. It is the men chauvinism that controls women's reproductive abilities and sexualities, her right and right to control the property, etc. Hence, it is axiomatic that disabled women have had to fight twice as hard as able women for maintaining their existence and integrity. Disabled women are considered as dependable, incompetent, not fit for marriage and procreation of child and even not proper to enjoy the minimum civil, political, social, cultural and economic rights. They are kept in the non-powerful group and compelled to adjust with the dominant group even at the cost of their dignity and integrity.

Feminist disability studies address the gender issues as well as practical experiences of a disabled received from the society so as to innovate strategy and mechanism to establish and enforce their human rights and also to change the outlook of the society in this regard. It is axiomatic that disability is experienced by the man and women differently in a different part of the globe and more or less such discourse of life and differences are shaped and determined by the

culture prevails in the society. Several imperative studies show that the sufferings of disabled women are graver than disabled men. Disabled women, in comparison, with disabled men, are more economically dependent and receive less care and support either from the family or the society as a whole. The social structure as well as the bias orientation of the society crippled down the development and natural growth of disabled women. The insensitive attitude of society makes their position more vulnerable, and they are left to face more physical, sexual and psychological violence, and abuse. The high rate of illiteracy, lack of technical skills, and the myth and fear concerning their disability along with the social and cultural restrictions and taboos completely alienated them from the mainstream of the society including the market system, make them immobile, housebound. This led to double discrimination on disabled women and becomes an object of study under feminist disability studies.<sup>4</sup>

Many similarities and dissimilarities are there in 'Feminist Studies' and 'Feminist Disability Studies'. The plight of the women in the society is highlighted under both the studies and both studies the demand for greater autonomy, extending opportunities and proper development of the women because it is imperative that the patriarchal society never considered women at par with the male and always denied the 'right to equality' and equitable treatment to them. Beauvoir said one is not born a woman, but rather becomes one<sup>5</sup>. On the other hand, the exponents like Geddes, Thompson, etc. are there who believe the gender identity grows from biological nature which considers men are inherently 'catabolic' and women as 'anabolic'. While male sex is bestowed with the adjectives like assertiveness, independence, confidence, activeness, aggressiveness, enterprise, impersonality,

<sup>3</sup> Department of Economic and Social Affairs United Nations, *Disability and Development Report 2018*, (United Nations, New York, 2019), 7.

<sup>4</sup> Ruthie Bonan Gomes, Paula Helena Lopes, et al, 'New Dialogues in Feminist Disabilities Studies', (2019) 27(1) *Estudos Feministas*, 9.

<sup>5</sup> Babatunde, Ekundayo B. and Babatunde E. Durowaiye. 'The Conception of 'Sex' and 'Gender' as Background to Inequities Faced by Women' (2015) 7(8 March) *The Journal of Pan African Studies*, 64-79. English.

and recklessness, the female sex is with the terms like passivity, submissiveness, emotion, caring, gentleness, warmth, sensitivity, receptiveness, expressiveness, and biological economy<sup>6</sup>. The above adjectives are purposefully used to place the women an inferior position in the equation of division of labour. Women were denied to live with dignity in the name of protecting their dignity and even denied or controlled their right to the body, right to reproduction or right to sexuality.

Feminism Challenges the age-old belief system of the society that females are born weak and less capable than male members of society. Similarly, feminist disability studies hammer on our very thinking about people with a disability that they are incapable of their body and mind. It portrays disability in terms of rights and exclusion. Like the concept of gender, the existing perception about disability is also construed by society. As per the feminists, the women experience their own body are always mediated by constructions, associations, and images which most patriarchal socio-cultural formations accept and endorse<sup>7</sup>. Like this, the experience of disability is also perceived by socio-cultural constructions<sup>8</sup>. Gender issues certainly have an impact on a person's experience of disability.

## II. LEGAL MATERIAL AND METHODS

This article has primarily followed the analytical method and has undergone comparative legal study to find out the real scenario of women with disabilities. Mainly based on secondary data issued from the different international and national organisations of public interests, Governments, and Governmental agencies and by studying both qualitative and quantitative matrix this article has strived to understand the interconnection of gender and disability and also its present nature. This article is mainly concerned with the human

rights issues of disabled women and to realize the matter it has followed the doctrinal method and revisited the prevailing legal structure, policies, governmental documents, judicial pronouncements, etc. This article advocates in favour of collaborative governance to address the issue of Women's disability.

## III. RESULT AND DISCUSSIONS

### Disabled Women's Right- A Serious Human Right Issue

Though the consciousness about the rights of the disabled is gradually developing among the people, especially in civil society and human rights enforcement groups but still the society at large is either ignorant or indifferent about the fact that how the gender affects the experiences of disability of man and women differently. It is axiomatic that the experiences of disabled men and women are not the same, and the reasons for the above are deeply embodied in the culture of human society. Both 'gender' and 'disability' is a socially construed concept. The society portrays and institutionalised both the body of 'women' and 'disabled' in a particular form that influences their experiences and interactions. Based on its socio-cultural equations, the society shapes certain images of gendered as well as able-bodied and thereafter those images are institutionalised by the state agencies. So lots of similarities are there in between the gender and disability issues and which have also been accepted by the exponents of feminism.

All disabled persons irrespective of gender issues share constraints like marginalisation, isolation, social exclusion, discrimination, deprivation of basic amenities of life, and denial of basic human rights. But at the same time, we have to keep in mind that disabled women in addition to their sufferings for being disabled, experience all those discriminations that a woman suffers on the ground of sex. So a disabled woman suffers double discrimination which is quite different from

<sup>6</sup> Ibid.

<sup>7</sup> Nandini Ghosh, 'Embodied Experiences: Being Female and Disabled', (2010) 45(17 April) *Economic and Political Weekly*, 24-30, 2,

<<http://www.jstor.org/stable/25664386>>

Accessed: 25-06-2018 06:51 UTC.

<sup>8</sup> Ibid, 2.

the experiences of a disabled man.<sup>9</sup> Various studies reveal that in comparison with the disabled men, the sufferings of disabled women are grave<sup>10</sup>. They suffer a worse form of poverty and isolation; face more difficulty in getting mainstream services and rehabilitation, and prone to more sexual violence and abuse. So the experiences of life to disabled women are bitterer than disabled men. Disabled women are considered as a burden to the family. Still, a majority of family members, as well as the society at large, never consider them human beings of their parlance, always they are underestimated and deprived of getting an education, proper health care, and basic needs of their life. Still, the society considers that a disabled woman is not fit for marriage and this childish idea comes from their preconceived notions that either they are not able for procreation of child or will not be dependable for the rearing of the child. This attitude of society completely crippled down the possibility of disabled women to make them self-sufficient and to explore their potentialities.<sup>11</sup>

On the other hand, the above attitude of the society and the family members changes completely while engaging them in domestic activities because they are not given the price or proper price for their labours. This social structure mentored the mind of the disabled women that they are surviving at the mercy of their so-called able family members and they should not bother or ask for the implementation of their rights:

*“Disability diminishes sharply their often inferior roles, even in their own households. The stigma of disability, with its myths and fears, increases their social isolation. When no rehabilitation facilities are available, they become immobile and*

*housebound, and their isolation is complete”<sup>12</sup>.*

### **Protection of Disabled Women: Peeping through International Legal Mechanism**

So, the human rights of disabled women are seriously at stake as it is often being jeopardized by their family members and society as a whole. This social system renders women with a disability as persona non-grata or lesser citizens, which is a very unfortunate and inhuman act too. As per the report of the United Nations Population Fund (UNFPA), the number of disabled persons constitutes fifteen percent of the total world's population, and amazingly a huge number of population around two hundred million belonging from the age group of 10 to 24 are not recorded officially.<sup>13</sup>

The above report also claimed that disabled people have been denied education health services and subjected to acute poverty, discrimination, and violence. According to this report, disabled young women, particularly the women with the least developed cognitive faculty are more, vulnerable and prone to sexual violence. Disabled girls are either thwarted or deprived them of their life or eschewed from all sorts of social activities to make them handicapped in all respect. They are denied from the basic amenities of life including education, health care facilities, etc. and apart from the above their family in tune with the societal norms creates obstacles in every inch of their life so that they cannot get any opportunity to explore the potentiality of life and to develop their personality. Their life becomes hellish not only for the discriminatory attitude of the society but also due to the antagonistic and uncaring attitude of their family members and in this respect they are subjected to

<sup>9</sup> Pooja Sigh, 'Person with Disabilities and Economic Inequalities in India', (2014) 44(2, July-December) *India Anthropologist*, 74.

<sup>10</sup> Lina Abu Habib, 'Women and Disability Don't Mix!': Double Discrimination and Disabled Women's Rights in Gender and Development', (1995) 3(2 June) [Rights], *Taylor & Francis, Ltd. on behalf of Oxfam GB*, 49, available at <<http://www.jstor.org/stable/4030515>>, accessed on 25-06-2018 05:59 UTC.

<sup>11</sup> Anita Ghai, *Rethinking Disability in India*, (Delhi, Routledge, 2015), 9.

<sup>12</sup> *Ibid*, 50.

<sup>13</sup> *Five things you didn't know about disability and sexual violence* (UNFPA on 30<sup>th</sup> October, 2018), <<https://www.unfpa.org/news/five-things-you-didnt-know-about-disability-and-sexual-violence>> Accessed on 30/12/2018.

double discrimination- one is for the gender and another for becoming disabled.

Worldwide, disabled women have a 19.6% employment rate, compared with 52.8% for disabled and 29.9% for women without disabilities.<sup>14</sup> A study conducted in Australia found that as many as 62% of women with disabilities under the age of 50 had experienced violence since the age of 15, and women with disabilities had experienced sexual violence at three times the rate of those without disabilities.<sup>15</sup>

Moreover, it often the integrity of the young disabled women is violated, and they are not allowed to decide on their bodies. As per the study of Human Rights Watch worldwide, only twenty percent of disabled women get the opportunity of rehabilitation.<sup>16</sup> Disabled women's sexual and reproductive rights often jeopardised. As per the fact-sheets of WHO made on 16<sup>th</sup> January 2018, disabled people or the differently able people as a whole constitute the largest minority in the world. Women with disabilities comprise 10 percent of all women across the globe.<sup>17</sup>

Despite this fact, people with disabilities are not getting the required legal, social, cultural and political recognition, and protection to enforce their human rights. It is very unfortunate to note that neither the UDHR, 1948 incorporates the mechanism to address the problems of neither disables nor the United Nations' Covenants, namely ICCPR, 1966 or the ICESCR, 1966 advocates to provide preferential treatment to the disabled considering their vulnerable position.

The silence of the international legal system, to consider the issues of disables as human right issue signifies that the world community failed to realise the gravity of the situation and to come forward to undo the

inhuman wrong inflicted on them. Though, the Human Rights Laws promote the right to life, liberty, security, equality, and equity, but fail to read the attitude of the society, which is still not ready to protect the dignity and integrity of the people with disabilities. Consequently, the specially-able persons need protective discrimination to promote their welfare and well-being.

However, in the year 1950, the Social Commission had taken a resolution to adopt the reports entitled "Social rehabilitation of the physically handicapped" and "Social rehabilitation of the blind" during its sixth session and empower the United Nations Economic and Social Council and accordingly the UN and its entities namely, International Labour Organisation, the World Health Organisation, and the United Nations Children's Fund agreed to promote the welfare schemes for persons with disability.<sup>18</sup> Like that General assembly adopted the Declaration on the Rights of Mentally Retarded Persons by its resolution 2856 (XXVI) of 20 December 1971 to ensure the medical cure, social welfare, and rehabilitation of the mentally retarded persons and to accord legal protection to their rights.<sup>19</sup>

In the year 1975, UN has taken not the piecemeal approach rather a composite approach on persons with disability and adopted the General assembly adopted the Declaration on the Rights of Mentally Retarded Persons by its resolution 2856 (XXVI) of 20 December 1971 to ensure the medical cure, social welfare, and rehabilitation of the mentally retarded persons and to accord legal protection to their rights. Through this declaration, the UN called for international and national action for the proper development of the potentialities of the disabled persons.<sup>20</sup>

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> *Women and Girls with Disabilities*, <<https://www.hrw.org/legacy/women/disabled.html>> Accessed on 30/12/2018.

<sup>17</sup> Department of Economic and Social Affairs United Nations, above n 3.

<sup>18</sup> Ruthie Bonan Gomes, Paula Helena Lopes, et al above n 4.

<sup>19</sup> 'Declaration on the Rights of Mentally Retarded Persons' on *United Nations High Commissioner for Human Rights (OHCHR)* <<https://www.ohchr.org/Documents/ProfessionalInterest/res2856.pdf>> Accessed on 31/12/2018.

<sup>20</sup> 'Declaration on the Rights of Disabled Persons' on *United Nations High Commissioner for Human Rights (OHCHR)* <<https://www.ohchr.org/en/professionalinterest/p>

In 1976, the General Assembly decided to declare 1981 as the International Year of Disabled persons (IYDP) to guarantee equality of opportunities, rehabilitation, and prevention of disabilities. The central idea of IYDP was to acknowledge the right of the persons with disabilities to take an active part in the life and development of their societies, to ensure that they should enjoy living conditions equal to those of other citizens and have an equal share in improved conditions happens due to socio-economic development. Its aim was also to develop the awareness and understanding of the society regarding the acceptance of disabled persons in natural parlance of life. It has guaranteed the disabled persons the right to form organisations and to express their views to improve their situation. It advocates for change of the attitude of the society regarding the negative perception of the society about persons with disabilities.<sup>21</sup>

It astonishes that in the seventies when the UN and its agencies were involved in taking some important decisions regarding the welfare of the people with a disability again failed to incorporate the issues of disabled women in the epoch-making convention of General Assembly known as the Convention on the Elimination of all Forms of Discrimination against Women, 1979. Though it is often argued that the above convention emphasizes on full development and advancement of women, which is equally applicable to disabled women but this argument cannot be accepted as the conditions of disabled women are much worse and different than able women. So it would be better if the above convention contains the provisions to approach would specifically call for the development and protection of rights of disabled persons. Here

it is about mention that the above convention of 1979 addressed the issues of ‘women’ and ‘rural women’ which is quite appreciable but to remain mum about the protection of human rights issues of disabled women is very discouraging and unconvincing. In 1982 the General Assembly adopted the World Programme of Action Concerning Disabled Persons (WPA). Through WPA a global strategy was made to enhance disability prevention, rehabilitation, and equalization of opportunities, which pertains to the active participation of disabled persons in social life and national development. WPA approached disability from a human right perspective. It emphasized on the very notion that disabilities should not be treated in isolation, but within the context of normal community services and advocated in favour of ensuring equal opportunity.<sup>22</sup>

To promote the guiding principle and philosophy of WPA the General Assembly designated the decade of disabled persons starting from 1983 to 1992. During this period, several steps were taken to ensure the physical and mental development of the disabled. Apart from the other conventions, the General Assembly vide Resolution 44/70 of 15 March 1990 adopted Tallinn Guidelines for Action on Human Resources Development in the Field of Disability.<sup>23</sup>

Tallinn guidelines are radical as the first time it acknowledges that disabled persons are a maker of their path rather than objects of care, and this perception should be carried on every governmental and private policy and programs. This signifies that disabled persons, as individuals and as members of organizations, should be involved in the decision-making process as equal partners. The abilities of the disabled persons should strengthen through

ages/rightsofdisabledpersons.aspx> Accessed on 31/12/18.

<sup>21</sup> UN Department of Economic and Social Affairs The International Year of Disabled Persons 1981, <<https://www.un.org/development/desa/disabilities/the-international-year-of-disabled-persons-1981.html> > Accessed on 31/ 12/ 2018.

<sup>22</sup> UN Department of Economic and Social Affairs, World Programme of Action Concerning Disable Persons, <<https://www.un.org/development/desa/disabilities/>

s/resources/world-programme-of-action-concerning-disabled-persons.html> Accessed on 31/ 12/ 2018.

<sup>23</sup> General Assembly Resolution 44/70 of 15 March 1990, Tallin Guidelines for Action on Human Resources Development in the Field of Disability, <<http://siteresources.worldbank.org/INTTOPDIS/KNO/Resources/2068385-1138826823809/2180404-1141165649294/tallinnGuidelines.pdf> > Accessed on 31/12/2018.

community-based supplementary services provided by Governments and non-governmental organizations. Such a strategy aimed to promote self-determination among them and thereafter to involve them in developmental activities.

Tallinn guidelines emphasized the development of different devices including Braille script, sign-language interpretation for imparting information and education, to introduce a legally binding standard for ensuring barrier-free buildings, roads, transportation systems, etc. and to ensure preferential protection for them in appointment and employment. It's called for improving the methodology for human resources development and advocated that Policies and programs for human resources development concerning disabled persons should be based on an assessment of their needs. It is the first concerted attempt on the part of the UN to specifically mention about disabled women and acknowledged that they must be inducted in the existing national and regional programs aimed at women.

The Standard Rules on Equalization of Opportunities for Persons with Disabilities was an important outcome of the UN Decade of Persons with Disabilities, bringing the importance of the equalization of opportunities to the forefront of the global development agenda. The Standard Rules were adopted on 20<sup>th</sup> December 1993 by the General Assembly vide Resolution 48/96 to advance the central objective of the World Programme of Action concerning Disabled Persons.<sup>24</sup> It consists of 22 rules summarizing the message of the WPA. Though these rules are not legally binding but represent the strong moral and political commitment of Governments to take action to attain equalization of opportunities for persons with disabilities. It called for the appointment of a Special Rapporteur to monitor the

implementation of the Rules. One another important development in this regard had taken place through World Conference of Human Rights at Vienna, 1993 where 171 states adopted by consensus the Vienna Declaration and Programme of Action (VDPA). VDPA in its Para 63 solemnly declares that like any other persons the disabled are also entitled to enjoy all the rights and freedoms guaranteed by the human right regime. It advocated that like other the disabled persons are also entitled to enjoy their rights to life, to work for their livelihood and to ensure their all-round development, actively involve with the main stream of the society and will maintain their independent identity<sup>25</sup>. Any violation of such rights of a disabled person or any kind of discrimination will be considered as an attempt to jeopardise of their rights.

The above positive insights of The World Conference on Human Rights was a clear indicator to address the issues of disabled women from positive mind and to treat them equally by adopting preferential discrimination and also by discarding and eliminating socially construed barriers which creates impediments in their way to actively participate with the society by maintaining their own identity<sup>26</sup>. It stressed on full participation of women as both agents and beneficiaries in the development process, and reiterates the objectives to ensure their progress.<sup>27</sup> It advocated ending violence<sup>28</sup> and discrimination against women.<sup>29</sup>

World Summit for Social Development, Copenhagen held on 6-12 March 1995 adopted the Copenhagen Declaration and Programme of Action which endorses the disable people as a major minority group of the world and observed that more than 1 in 10, are people with disabilities, who are too often forced into

<sup>24</sup> UN Department of Economic and Social Affairs, Standard Rules on the Equalization of Opportunities for Persons with Disabilities, <<https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html>> Accessed on 31/ 12/ 2018.

<sup>25</sup> UN Human Rights Office of The High Commissioner, Vienna Declaration and

Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>> Accessed on 31/ 12/ 2018.

<sup>26</sup> Ibid, Para 64.

<sup>27</sup> Ibid, Para 36.

<sup>28</sup> Ibid, Para 38.

<sup>29</sup> Ibid, Para 39.

poverty, unemployment and social isolation<sup>30</sup> and, call for ensuring their development to attain social and people-centered sustainable development<sup>31</sup>.

After Durban Declaration, 2001 and some other welcoming steps of the UN and its agencies in the matter of protection of human rights finally, the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol vide resolution A/RES/61/106 was adopted on 13 December 2006. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention and considered as the first comprehensive human right treaty related to persons with disability. This convention came into force in 2008. Along with the other things it reaffirmed that disabled persons should be empowered to enjoy all the fundamental rights as well as the fundamental freedoms irrespective of any discrimination<sup>32</sup>. It clarifies that it is the attitudinal and environmental impediments that create bar into the way of the disabled persons to interact with the mainstream of the society at par with the so-called able persons<sup>33</sup> and proclaimed that without bringing the disabled in the mainstream it is not possible to ensure sustainable development.<sup>34</sup> It reveals the crude reality that the conditions of young disabled women are more vulnerable than the adults, and suffer violence, abuse, negligent treatment, maltreatment and exploitation both within and outside the family.<sup>35</sup> Article 6 of the CRPD clarified that young disabled girls and women are subject to multiple discrimination, and the state parties keeping the above grim reality in mind must take appropriate measures for their all-round development, advancement, and empowerment. CRPD in the literal sense can be termed as a landmark convention for the disabled persons because it identified and tried to eschew the exclusion politics by

harmonizing the policies and programs of the relating to disability and also by formulating non-legal strategies such as to engage the disables in developmental and policymaking activities.

Apart from the above, all the other international human rights instruments not mentioned here but formulated to ensure gender justice is applicable to disable women too to shun the politics of exclusion. It is the need of the hour to bring the attitudinal and behavioural change towards the concept of disability so that every person irrespective of any discrimination can live with dignity. The social support system should not be grown from the concept of any charity, sympathy or mercy rather should be developed from right centric approach so that any human being may not fit with the set image or concept of the society should get sufficient space to explore their potentiality and to develop their personality.

### **Disabled Women under Indian Legal System**

The constitution of India envisages tripartite picturesque of justice viz., justice-social, economic and political the direction about which is provided in the preamble. The above notion, of justice of course, gives a guarantee of full and free development of every individual, including the person with a disability. It affirms to provide equal status and opportunity to its entire citizen, and the basic jurisprudence behind this philosophy ensures that disabled persons should enjoy the same status with the able person, and they cannot be treated unjustly on disability or gender issues.

Equality is the dictum of our constitution, reflects under Art.14 of our constitution. The constitution further enjoins equal status to women through Art.15 (1), which prohibits gender discrimination and Art. 15(3) have been inserted to make special

<sup>30</sup> H of Para 16 of Copenhagen Declaration and Programme of Action <[http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.166\\_9\\_Declaration.pdf](http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.166_9_Declaration.pdf)> Accessed on 31/ 12/ 2018.

<sup>31</sup> Ibid Para -4.

<sup>32</sup> Para C of the Preamble of the Convention on The Rights of Persons With Disabilities <<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>> Accessed on 31/ 12/ 2018.

<sup>33</sup> Ibid, Para –e.

<sup>34</sup> Ibid, Para –g.

<sup>35</sup> Ibid, Para –q.



provisions for women to uplift their status. Art.23 and Art.24 protect disabled women from human trafficking and economic exploitation. In this regard, some other Articles are also notable, such as Arts.39, 42, 47. 51A(e), which respectively deals with the equal treatment of man and woman, human condition of work and maternity relief, to supply a nutritious diet by the state and the fundamental duty to protect the dignity of women. Article 21 gives the guarantee of the right to life and personal liberty and castigates the duty upon the state to provide all those amenities to the people and protect all those rights of the people, which can make the life of the people meaningful. People can enjoy their life properly and can ensure their physical, mental, and spiritual development. So, Art. 21 covers the variety of rights to curb inhuman rights and to promote human rights, and it is needless to mention that disabled women can use this legal protection for the development of their personality. But at the same time, it is very unfortunate to note that nowhere in part-III of the constitution the constitutional makers recommended any special provision or treatment for the disabled.

So far legislation regarding disabled women is concerned in India neither the matrimonial laws nor the succession laws impose any barrier regarding the matter of marriage or succession. Matrimonial laws in India only restricts marriage on the ground of disability where either party is an idiot or lunatic or Where one party is unable to give valid consent due to unsoundness of mind or is suffering from a mental disorder of such a kind and extent as to be unfit for 'marriage for the procreation of children. Some of the important legislation in India related to disabled women is:

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

This legislation is comprehensive legislation to enforce the human rights of the disabled in pursuance of the UN Convention about disable persons held in December 2006 of which India is also a signatory. It ensures equal opportunities to disables and to ensure

their active participation in every sphere of life.

This Act addresses the issues of welfare and development of disables and promises to fulfil the essential requirements of their life like imparting education including job oriented and skill development, training and research program, free and enabling environment, unemployment allowance, special insurance schemes, allotment of land and construction of dwelling houses, etc. The above Act prescribes for social-economic, political and cultural security for disabled persons. This Act also deals with the grievance redressal mechanism whereby persons with disabilities may move to the Chief Commissioner for Persons with Disabilities in the Centre or Commissioner for Persons with Disabilities in the State in case of violation of any right as prescribed under the legislation.

Moreover, this Act replaces the Persons with Disabilities (PWD) Act of 1995 to widen and strengthen the rights of PWD. The Act of 2016 specifically addresses the plight of women and children. The RPWD Act, 2016 extended the seven conditions of disabilities as earmarked by the PWD Act, 1995 to 21 conditions. Beside the blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation, and mental illness RPWD Act, 2016 include cerebral palsy, dwarfism, muscular dystrophy, acid attack victims, hard of hearing, speech and language disability, specific learning disabilities, autism spectrum disorders, chronic neurological disorders such as multiple sclerosis and Parkinson's disease, blood disorders such as hemophilia, thalassemia, and sickle cell anemia, and multiple disabilities. RPWD Act, 2016 provides for Central Advisory Board on Disability and the same advisory boards in the states to provide suggestions to the central government and the state government respectively on matters relating to persons with disabilities including policy formulation and also provides for District Level Committee to oversee implementation of the various provisions of the Act at the district level. It provides penal provisions to bring the perpetrators and violators of this

Act, to book and if required through special court by ensuring speedy trial.

**b. The Mental Health Act, 1987**

This Act is enacted to consolidate and amend the legal mechanism concerning medical aid and care to cure the mental ailment of the affected persons and also to protect their property and allied matters connected therewith or incidental thereto.

**c. The Rehabilitation Council of India Act, 1992**

This Act is amended in the year 2000. This Act calls for the establishment of the Rehabilitation Council of India, which will impart and monitor the training of the person associated with the rehabilitation program and also to provide special education so that the disabled persons can be rehabilitated properly.

**d. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999**

This Act provides for the constitution of a National Trust to ensure the protection and development of Persons affected by Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities, etc. As per Sec.10 of the above Act following are the objects of the National Trust:

- (a) *To make them independent on their own and to ensure that they can live with dignity in their community.*
- (b) *To empower such persons with proper support mechanisms so that they may live with their family by maintaining their integrity.*
- (c) *To engage the different registered bodies to support essential services during the period of crisis in the family of such persons*
- (d) *To treat such persons differently who lacks the cooperation from their family;*
- (e) *To ensure the wellbeing of such persons during the death of their parents or guardians;*

(f) *To make provisions for the appointment of guardians and trustees in need.*

(g) *To enable such persons to avail equal opportunities, benefits, and rights at par with the other member of the society.*

(h) *To ensure the allied rights in terms with the aforesaid goals.*

Apart from the above specific and major legislation to protect the rights and interests of the disabled persons the various other legislations are also there to ensure justice to disabled women in India like Immoral Traffic (Prevention) Act, 1956, The Maternity Benefit Act, 1961 (Amended in 1995), Dowry Prohibition Act, 1961, The Medical Termination of Pregnancy Act, 1971, The Contract Labour (Regulation and Abolition) Act, 1976, The Equal Remuneration Act, 1976, The Prohibition of Child Marriage Act, 2006, The Criminal Law (Amendment) Act, 2013, The Factories (Amendment) Act, 1986, Indecent Representation of Women (Prohibition) Act, 1986, Commission of Sati (Prevention) Act, 1987, The Protection of Women from Domestic Violence Act, 2005, The Protection of Children from Sexual Offences Act, 2012, etc. In India, we have no dearth of legislation to address the rights and other issues of disabled women but still, disabled women are the most deprived vulnerable and marginalised section in India. Lack of political will, corruption, poverty, lack of awareness, lack of socially sensitised Law Makers, Policy Makers & Judges, lack of representation of disabled women in the decision-making system are the most acute impediments to connect the disabled women with the mainstream of the society.

#### IV. CONCLUSION

Worldwide the disabled women are facing severe violations of human rights in every sphere of life. They are the most vulnerable and marginalised groups. No doubt, we have a plethora of laws across the globe, but it is the need of the hour to infuse awareness among the people so that the society can as a whole understand the problems and needs of the disabled women

and must refrain itself from segregating them as a separate group based on bearing a particular image of disability in mind. We should not forget, that disability is nothing more than a socially construed idea to regulate the whole affairs of the disabled persons and if we want to hammer this situation and want to ameliorate their condition we must have to come out from this set idea. They should be given due respect towards their dignity, entity, and integrity. It is high time to discard the politics of exclusion and to step towards the creation of a pluralistic society where humanity will get the priority over everything. Of course, various laws, covenants, conventions have been framed and formulated to address the issues of gender disability but it seems no one is serious about their implementation which is very alarming. The situation demands a strong political will to implement the laws properly so that the disabled can enforce their human rights and can lead a dignified life. A strong movement from the different pressure groups, specialised organisations, and feminists groups is also the need of the hour to fulfil the aspirations and demands of the disabled especially the physically and mentally challenged women. They need a comprehensive social support system that not only will take care of their rehabilitation, education or strengthening the health schemes but will also works for their empowerment. In the end, we need to change our attitude towards disabled women so that they can join the mainstream of society and participate in developmental activities. Socially sensitised people are better statutory armour against the humiliation of the mentally and socially challenged women than the black letters of the law.

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