THE ABLE WOMB OF THE DISABLED: REPRODUCTIVE JUSTICE FOR WOMEN WITH DISABILITIES IN INDIA

by

Ms. Shalu Sharma

Ph.D. (Law) Research Scholar,

Seedling School of Law and Governance,

Jaipur National University, Jaipur

&

Dr. Vandita Chahar

Assistant Professor,

Seedling School of Law and Governance,

Jaipur National University, Jaipur

ABSTRACT

The problem of Women with Disabilities is multi-faceted, involving both identity as a woman in a patriarchal society and their disability. Women with disabilities are often viewed with pity, seen as constantly in need of care and protection, and considered a burden on their caregivers. They are frequently not regarded as full holders of rights within society, as their caregivers are often seen speaking or acting on their behalf. However, it is essential to remember that they are human beings too and they should be able to exercise their basic human rights. Among these are the Reproductive rights, which include the right to procreate, the right to abortion, the right to decide when and with whom to have children, the right to access contraceptive measures, the right to healthcare, the right to opt for or refuse sterilization and many more. These rights are recognized by the International Conventions including the UN Convention on the Rights of Persons with Disabilities (CRPD)[1] and are considered part of the 'inalienable survival rights' under the Indian Constitution. They are secured by the Rights of persons with Disabilities (RPWD) Act, 2016. This paper focuses on the reproductive rights of women with disabilities in India and the legislations related to it. It also summarizes the constitutional provisions and the international covenants that mandate the exercise of these rights. Additionally, the social and judicial approaches to the reproductive rights of women with disabilities are discussed.

[1] 2006

Keywords – Reproductive rights, Women with disability, Right to life, Forced sterilization, capacity to consent

Introduction

In 2011, World Health Organization (WHO) and World Bank jointly produced the World Report on Disability. The report stated that nearly 15% of the world population lives with any one form of disability and around half of this group are women[2]. According to the report, "Disability is the umbrella term for impairments, activity limitations, and participation restrictions, referring to the negative aspects of interaction between an individual (with a health condition) and that individual's contextual factors (environmental and personal factors)"[3].

India's own enumeration data reflects this global pattern. The Census of India 2011 recorded approximately 26.8 million persons with disabilities, forming 2.21% of the national population, of whom close to 11.8 million were women and girls. This substantial population underlines why reproductive rights cannot be treated as a peripheral concern within disability rights discourse in India, but must be addressed as a mainstream constitutional and legislative priority.[4]

Disability does not exist within a person alone, but within a society that fail to provide equal respect and opportunities to individuals with health conditions. People with disabilities are deprived of their basic Human Rights. They are denied equal access to healthcare, employment and education, among other things. They are subjected to violence, abuse and disrespect because of their disabilities. They are denied bodily autonomy and are often subjected to forced sterilization or confined in their homes or institutions. This is not merely a hypothetical concern: a 2014 Human Rights Watch investigation into government-run institutions in India documented overcrowding, involuntary electroconvulsive therapy, and physical and sexual violence against women and girls with psychosocial or intellectual disabilities held in such facilities, with one woman describing the conditions as leaving her 'treated worse than

[2] World Health Organization, https://www.who.int/teams/noncommunicable-diseases/sensory-functions-disability-and-rehabilitation/world-report-on-disability (Last visited May 8th, 2025)
[3] World Health Organization and World Bank, World Disability Report 2011
[4] M Tara Casebolt and others, 'Maternal Healthcare Use by Women with Disabilities in Rajasthan, India: A Secondary Analysis of the Annual Health Survey' (2023) 9(1) Maternal Health, Neonatology and Perinatology 11.

animals'.[5] Usually, person with disability is considered legally incompetent to take decisions for themselves. This presumed incompetency also deprives them of their Reproductive Rights.

The International Conference on Population and Development (ICPD) Programme of Action in 1994 recognized Reproductive Rights as a Fundamental Human Right. These rights include the freedom to decide without discrimination, coercion, or violence, when, how and with whom to have children as well as, right access to reproductive healthcare. However, merely recognizing reproductive rights in law is not sufficient. It is essential to establish a social structure in which all women, regardless of their differences are able to exercise these rights freely and independently, in both letter and spirit.

Indian Constitution

The Indian Constitution upholds Reproductive Rights an essential component of Right to life, privacy, equality and health, as guaranteed under Articles 14 and 21. Various Directive Principles of State policy also promote the realization of reproductive justice for all women including Women with disabilities. Article 39A ensures access to justice and provides for free legal aid to women in cases of infringement of reproductive rights. Article 47 places a duty on the state to raise the level of nutrition and standard of living and to improve public health. This includes ensuring the availability of healthcare services such as access to contraception, prenatal and postnatal care and safe abortion services. These services should also be inclusive and responsive to the specific needs of women with disabilities. Empirical research bears out the gap between this constitutional promise and lived experience: a secondary analysis of Annual Health Survey data from Rajasthan found that women with disabilities were significantly less likely than women without disabilities to receive the recommended number of antenatal care visits or skilled attendance at delivery, pointing to systemic shortfalls in translating Article 47's healthcare mandate into accessible services on the ground.[6] India is also a signatory to various International Conventions that recognize reproductive rights and their accessibility for women with disabilities. In this regard, Article 51(c) and Article 253 of the constitution place a constitutional obligation on the state to honor these International commitments and empowers the parliament to legislate accordingly.

[5] Human Rights Watch, 'India: Women With Disabilities Locked Away and Abused' (Human Rights Watch, 3 December 2014) <https://www.hrw.org/news/2014/12/03/india-women-disabilities-locked-away-and-abused> accessed 18 September 2026.

[6] M Tara Casebolt and others, 'Maternal Healthcare Use by Women with Disabilities in Rajasthan, India: A Secondary Analysis of the Annual Health Survey' (2023) 9(1) Maternal Health, Neonatology and Perinatology 11.

Right to life and Right to privacy

Right to life and personal liberty enshrined in Article 21 is available to every person. The term 'life' has wider connotations and includes within it the right to bodily autonomy. Bodily autonomy means the power to take decisions in respect of one's own body. The right to have a sexual life and other reproductive rights including right to have a child, right to abortion, right to access to contraceptive measures, right to reproductive health all falls within the umbrella term 'Right to life and personal liberty'. In the case of State of Rajasthan Vs. S[7], Rajasthan High Court held that a women's right to make reproductive choices has been recognized by the supreme Court as a dimension of personal liberty and the denial of this right will cause mental trauma and agony to the women. Recently, in A (Mother of X) Vs. State of Maharashtra and Anr.[8], the Hon'ble Supreme Court held that consent of the pregnant person in matters of reproductive choice and abortion is paramount.

Even where courts have affirmed reproductive autonomy in principle, access on the ground remains constrained by the physical inaccessibility of healthcare infrastructure. A qualitative and quantitative study of sexual and reproductive health services across five government hospitals in a north Indian city found that ramps, examination tables, toilets and waiting areas were frequently unusable by women with mobility, visual or hearing impairments, effectively limiting the practical benefit of the rights that the courts have recognised.[9]

Women with Disabilities in India are often impuissant of exercising this right as they are considered the responsibility of the family and caregivers who take decisions on her behalf. Women with disabilities are subjects of discrimination and violence in the society. They are easy prey to sexual offences. They are either considered asexual or hypersexual. Because of these factors they are often forced to undergo sterilization and denied of their Reproductive choices. The scale of this denial is stark: one study found that as many as 93% of women and girls with disabilities in India have been denied their reproductive rights in some form, while a Human Rights Watch investigation found that in fifteen of seventeen documented cases, women with disabilities who attempted to report sexual violence were neglected by the

[7] Double Bench Special Appeal Writ No. 1344/2019. Order dated 01.05.2020.
[8] [2024] 5 S.C.R. 470
[9] Ruchi Sharma and others, 'Physical Access Related User-Friendliness of Sexual and Reproductive Health Services for Women With Disabilities in Various Hospitals in a City in North India: An Integrated Qualitative and Quantitative Study' (2023) 15(1) Cureus e34276.

authorities or subjected to further abuse while seeking redress.[10] By the landmark judgement of Justice K.S. Puttaswamy(Retd.) Vs. Union of India[11] the Supreme Court recognized that Reproductive rights are also an intrinsic part of Right to privacy. By the denial of Reproductive Rights of Women with disabilities they are also denied of their right to privacy and various other rights and thereby such denial is inhuman and unconstitutional.

Legislations concerning Reproductive Rights of Women with Disability

Rights of Persons with Disabilities Act, 2016 (RPwD Act)[12]

India is a signatory to United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)[13] which marked a paradigm shift in the attitudes and approaches towards persons with disability. Persons with Disability are now subjects of rights and choices, they can now choose the way of their life and give a direction to it. They are no longer considered objects of special treatment and charity and treated as normal human beings who can exercise all human rights.

In consonance of the convention India enacted The Rights of Persons with Disabilities Act, 2016 (RPwD Act) repealing Persons with Disability (PwD) Act 1995. The act recognizes, protect and promote the reproductive rights of persons with disabilities. Women with disabilities have a right to procreate as well as abstain from procreating. The pregnancy cannot be terminated without the consent of the pregnant woman. Section 92(f) of the act criminalizes performing, conducting, or directing a medical procedure on a woman with disability which can cause termination of the pregnancy of the woman without her express conduct. But it exempts the situations of severe cases of disability where consent can be given by guardian of the women with disability and the opinion of registered medical practitioners should also be considered. Commentators have noted that this provision, while significant, does not extend to forced sterilisation as a distinct offence, and that the Act does not prescribe any procedure for ensuring that a woman's 'express consent' is obtained free of undue influence from caregivers

[10] Avantika Bunga and Tia Matthew, 'Women With Disabilities And Forced Sterilization In India' (Feminism in India, 12 March 2020) <https://feminisminindia.com/2020/03/12/women-disabilities-forced-sterilization-india/> accessed 18 September 2026; Human Rights Watch, 'Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India' (Human Rights Watch, 3 April 2018) <https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities> accessed 18 September 2026.

[11] (2017) 10 SCC 1

[12] ACT NO. 49 OF 2016

[13] 2006

or medical practitioners, leaving a practical gap between the protection the statute promises and the protection it is able to enforce.[14]

Women with disabilities should not be subjected to forced sterilization. Access to information regarding contraception and family planning is also a right provided under the Act. It also creates a duty on the government to provide information and access to women with disabilities.

Mental healthcare Act,2017[15]

The legislation protects the right to information about reproductive health and family planning of women with intellectual disabilities. This information helps in developing the informed consent in the woman. The act also lays down the procedure for accessing the capacity to consent for reproductive treatments and while evaluating the ability to understand and make informed decision about pregnancy, termination and sterilization. Section 18 of the Act mandates the access to mental healthcare without discrimination, including reproductive health. Unwanted sterilization and forced abortion is prohibited by Section 95 of the Act. Section 95 also bars electroconvulsive therapy performed without muscle relaxants and anaesthesia, prohibits the practice altogether on children, and outlaws the chaining of persons with mental illness in any form, reflecting the Act's broader shift away from custodial and coercive models of care toward a rights-based framework.[16]

Medical Termination of Pregnancy (MTP) Act,1971[17]

The Medical Termination of Pregnancy (MTP) Act of 1971 is a general act guiding the reproductive rights of women, especially regulating the right to abortion. This act also recognises the reproductive choice of women with disabilities and Section 3 further mandates that the pregnancy cannot be terminated without the consent of the women with disability under she is under 18 years of age or suffers from mental illness in which case her guardian can consent on behalf of her.

International standards and treaties

[14] Shivalika Singh, 'Forced Sterilization of Disabled Women in India: A Tale of Lost Autonomy' (LSE Human Rights Blog, 20 March 2023) <https://blogs.lse.ac.uk/humanrights/2023/03/20/forced-sterilization-of-disabled-women-in-india-a-tale-of-lost-autonomy/> accessed 18 September 2026.
[15] ACT NO. 10 OF 2017
[16] PLD India, 'Mental Healthcare Act, 2017 Enacted' (PLD India) <https://pldindia.org/bi-monthly-legal-news/mental-healthcare-act-2017-enacted/> accessed 18 September 2026.
[17] ACT NO. 34 OF 1971

The violations of rights of persons with disabilities is a common problem all over the world. They are often denied of their basic human rights. Human rights mechanisms recognize that women with disabilities are denied of their sexual and reproductive rights and are particularly vulnerable to sexual and reproductive health violations. In 2017, the then UN Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas, observed that the widespread practice of forced sterilisation, forced abortion and forced contraception inflicted on girls and young women with disabilities around the world could no longer be ignored, and international bodies have since recognised forced sterilisation as a form of torture and, in certain circumstances, a crime against humanity under the Rome Statute of the International Criminal Court.[18] Various international treaties ensures that sexual and reproductive information, health, services and facilities are available and accessible to women of all spheres.

The Government of India has time and again committed itself to International human rights treaties to protect the sexual and reproductive rights. The Supreme Court of India has held that the international conventions which are in harmony with the fundamental rights and in its spirit should be read into fundamental rights to enlarge the meaning, sphere and object of fundamental rights.

The International Conventions which protect and promote the Sexual and reproductive rights of women with disabilities can be enlisted as:

International Covenant on Economic, Social and Cultural Rights (ICESCR)[19]

Article 2(2), 3,10,12(1),15(1)(b) of ICESCR guarantees the right to health, equality and no-discrimination, it also allow to enjoy benefits of scientific advancement for carrying out pregnancy and motherhood. Article 12 addresses that the highest attainable standard of physical and mental health includes sexual and reproductive health.

Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)[20]

CEDAW recognises that women with disabilities also have right to make informed choices about their reproductive rights and they are protected from discrimination in accessing reproductive healthcare. The discriminatory attitudes and stereotypes that infringes the

[18] Almas Shaikh, 'Forced Sterilisation on Women and Girls with Disabilities is Against Law' (NewsClick, 20 July 2021) <https://www.newsclick.in/forced-sterilisation-women-girls-disabilities-law> accessed 18 September 2026.
[19] 1966
[20] 1979

reproductive autonomy of women with disabilities were challenged and signatory states were directed to eliminate them. CEDAW also encourages addressing barriers that prevent women with disabilities from accessing reproductive healthcare.

International Covenant on Civil and Political Rights (ICCPR)[21]

The ICCPR does not specifically addresses to reproductive rights of women with disabilities but address to reproductive rights in general as part of other fundamental rights like right to life, right to privacy, right to non-discrimination and freedom from torture, ill-treatment and non-consensual medical experimentation.

Convention on the Rights of Persons with Disabilities (CRPD)[22]

The CRPD recognizes that women with disabilities have equal sexual and reproductive rights like other women. It recognizes that women with disabilities may have special health needs while accessing their reproductive rights and the healthcare should be tailored to meet these needs. The lack of awareness, stigma and discrimination are considered as barriers and steps should be taken to address these barriers and states are obligated to do so. Women with disabilities should be provided information about their bodies so that they can form an informed opinion of their own regarding their reproductive rights. Articles 3, 5–7, 8(1)(b), 9–10, 12, 15, 17, 22–23, 25 of CRPD particularly address to sexual and reproductive rights of women with disabilities.

India ratified the CRPD on 1 October 2007, thereby assuming a binding international obligation to give domestic effect to its guarantees, a commitment that formed part of the legislative rationale for the subsequent enactment of the RPwD Act, 2016.[23]

Landmark cases

Suchita Srivastava &Anr. Vs. Chandigarh Administration[24]

An intellectually disabled women became pregnant as a result of offence of rape while she was residing as an inmate in a government run welfare home in Chandigarh. The High Court of

[21] 1966
[22] 2006
[23] Neetu and others, 'Forced Sterilization and Its Effect on the Reproductive and Sexual Health Rights of WWD (Women with Disability)' (2024) 44(2s) Library Progress International 2079, 2081.
[24] [2009] 9 SCC 1

Punjab and Haryana considered termination of her pregnancy in her best interest without taking into consideration the consent of the women.

The Medical Termination of Pregnancy Act, 1971 lays that the consent of the pregnant woman is an essential prerequisite for performing an abortion unless she is a minor or suffer from 'mental illness'. A three-member medical board constituted by Director Principal of GMCH and headed by the Chairperson of Department of Psychiatry opined that the mental condition of the pregnant victim was of 'mind mental retardation'. The Hon'ble Supreme Court stated that the law should respect the decision of the persons who fall in category of mild to moderate mental retardation. As they are capable of forming a rational judgment about the consequences of the pregnancy and have the capacity to consent about its termination. The reproductive choice of the woman should always be considered in spite of all other prevailing circumstances.

The Hon'ble Supreme Court also referred to the United Nations Declaration on the Rights of Mentally Retarded Persons, 1971 where it was said that the mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.

The reasoning in Suchita Srivastava has continued to shape subsequent jurisprudence: commentators have observed that the Supreme Court's insistence on the primacy of the pregnant woman's own consent, rather than a third party's assessment of her best interests, was directly echoed and extended in the Court's 2024 decision in A (Mother of X), which likewise held that neither family members nor medical boards may override a pregnant person's own reproductive choice.[25]

The consent of the pregnant woman was given paramount consideration while deciding the case.

Z Vs. State of Bihar & Ors.[26]

In this case a destitute woman was found to be pregnant and HIV+ as a result of offence of rape. She wished to terminate the pregnancy of 17 weeks. The hospital failed to terminate the pregnancy because of the unnecessary procedure. The Patna High Court denied the request of termination on the grounds that the pregnancy being over 20 weeks. Commentators have pointed to this case as illustrative of a wider systemic problem: administrative and institutional

[25] Casemine, 'Supreme Court Upholds Reproductive Autonomy in A (Mother of X) v State of Maharashtra' (Casemine, 2024) <https://www.casemine.com/commentary/in/supreme-court-upholds-reproductive-autonomy-in-a-(mother-of-x)-v.-state-of-maharashtra/view> accessed 18 September 2026.
[26] (2018) 11 SCC 572

delay routinely pushes vulnerable pregnant women past the gestational limits prescribed by the Medical Termination of Pregnancy Act, so that the very authorities responsible for facilitating access to safe abortion become the reason that access is denied.[27]

In was held by the Hon'ble Supreme Court that every day matters in cases of pregnancy. It has to be borne in mind that element of time is extremely significant in pregnancy matters. All the institutions dealing with pregnant woman should be quick in action so that the rights of a woman are not hindered. The fundamental concept relating to bodily integrity, personal autonomy and sovereignty over her body have to be given requisite respect while taking the decision and the concept of consent by a guardian in the case of major should not be overemphasized.

The Supreme Court held that the woman was capable of forming a judgment as to her own best interest. The absence of a guardian cannot deny the exercise of her reproductive choice. Because of the indolent conduct of the hospital the woman was not able to exercise her reproductive choice and hence she is entitled to compensation.

Conclusion

Women with disabilities form a considerable portion of the society. They are also subjects of human rights which also include the sexual and reproductive rights. The disability of the women cannot rob her of the right to make her reproductive choices. Due to lack of accessibility to information and their dependency on others prevent them from exercising their reproductive rights. Women with disabilities are often stereotypically considered asexual or hypersexual which lead to their forced sterilization.

This is not merely a historical or theoretical anxiety. In 1994, media investigations revealed that hysterectomies were being performed on women and girls with intellectual disabilities in Maharashtra with the joint involvement of state authorities, doctors and families, with some medical practitioners defending the practice as an accepted form of 'treatment', and with little regard paid to the woman's own consent.[28]

[27] Center for Reproductive Rights, 'Ensuring Reproductive Rights: Reform to Address Women's and Girls' Need for Abortion After 20 Weeks in India' (Center for Reproductive Rights, 2018) <https://reproductiverights.org/document/ensuring-reproductive-rights-reform-to-address-womens-and-girls-need-for-abortion-after-20-> accessed 18 September 2026.

[28] Neetu and others, 'Forced Sterilization and Its Effect on the Reproductive and Sexual Health Rights of WWD (Women with Disability)' (2024) 44(2s) Library Progress International 2079, 2082.

The eugenics theory is a popular concept where to refine the quality of society people with disabilities were prevented from having children so that the disability does not carry forward. The need for ableism has prevented the society from treating people with disabilities as members of the society.

The Indian Government should make the reproductive choices more available, accessible and acceptable. The healthcare services should be made more sensitive towards needs of women with disabilities. Women with disability must be able to make decision about their reproductive autonomy and choices and support should be extended by state to put in force the consent of the women while making reproductive decisions. Grassroots interventions offer a template for this kind of support: initiatives such as Project Samarth have organised menstrual health awareness sessions for adolescent girls with disabilities, addressing one of the stated justifications for forced sterilisation directly and demonstrating that community-based education can reduce reliance on invasive medical intervention.[29]

There is a need to bring change in the way of treatment of women with disabilities. The day they are considered as normal human being with some special needs the rights could be freely exercised. Supported decision making models should be promoted where women with disabilities are educated about their sexual and reproductive rights so that they become capable of forming an informed consent.

[29] Priyanka Changoiwala, 'The Fight to End Forced Sterilization of Girls with Disabilities' (The New Humanitarian, 19 December 2017) <https://deeply.thenewhumanitarian.org/womenandgirls/articles/2017/12/19/the-fight-to-end-forced-sterilization-of-girls-with-disabilities> accessed 18 September 2026.