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Reproductive Rights of Girls and Women with Intellectual Disabilities in India: A Legal Analysis

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ABSTRACT

This paper explores reproductive rights for girls and women with intellectual disabilities in India. Despite developments that taken place in disability legislation and human rights frameworks, the exercise of reproductive autonomy continues to be denied to this marginalized group. Examining Indian laws and their effect on the reproductive rights of intellectually disabled women the study investigates key laws including Rights of Persons with Disabilities Act, 2016 and the Medical Termination of Pregnancy Act, 1971. The research highlights the disparities that exist between the intention of the law and its execution and calls for inclusive measures that endorse and support the decision-making abilities. Through case-based evidence and legal precedents, the research attempts to bring to light the obstacles these women face and to suggest potential changes that would facilitate more equitable access to reproductive healthcare. The research findings show that much needs to be done on empowering women through inclusive education, those services which are easily accessible, and advocacy groups on their own so that they can make decisions on their reproductive lives. The paper further recommends legal reforms, enforcement of better policies, and social awakening to uphold their reproductive rights in a meaningful and dignified manner.

Keywords: Reproductive autonomy; disability law; inclusive healthcare; women with disabilities; legal rights; India; intellectual impairment; empowerment; health justice.

I. INTRODUCTION

Reproductive rights are named as human rights to the autonomy to make informed decisions about one's reproductive health including access to health care services and family planning, and decisions related to pregnancy and childbirth.² Reproductive rights have lately gained momentum in India, especially relating to marginalized groups such as women with intellectual disabilities.³ Intellectual disability describes conditions wherein persons have

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² United Nations, The Universal Declaration of Human Rights, adopted 10 December 1948, Article 25.

³ See generally, UN Committee on the Elimination of Discrimination Against Women, General Recommendation No.24 (1999).

limitations with cognitive function as well as adaptive behavior. Adaptive behavior means the capacity that one has to "meet the developmental and social standards for personal independence and social responsibility."⁴ These constraints can drastically intersect with the capacity of the individual to negotiate with a complex social and legal system. Such women face a double whammy of discrimination because of gender and disability, thereby hindering access to reproductive health services. Stigma in society is attached to both disability and reproductive health, more vulnerable to violations of their rights. While an evolving legal scenario attempts to assert the reproductive rights of women with intellectual disabilities in India, significant gaps remain.⁵ The Rights of Persons with Disabilities Act, 2016⁶ the Medical Termination of Pregnancy Act, 1971 as amended thereto; Mental Healthcare Act; etc., are the champions in this area, but there is a gap in terms of implementation or inconsistent implementation that, at times, leaves much to be desired.

In India, intellectual disability is legally considered a ground for incapacity, hindering a person from exercising their fundamental rights to procreation and motherhood.⁷ Therefore, it denies them these natural human rights. This article intends to conduct a critical review of the reproductive rights of women and girls with intellectual disabilities under Indian law. It will address the intersection of disability and reproductive rights and will highlight the particular problems that affect this population. By looking into the existing laws and their implications, the paper hopes to reveal areas in need of reform to press for a more accommodative approach that respects the autonomy and agency of people with intellectual disabilities. Furthermore, integrating case studies and various real-life instances of the lived realities of these women will stress the urgent need for awareness, education, and advocacy in advancing reproductive rights.

II. UPHOLDING REPRODUCTIVE AUTONOMY IN WOMEN AND RELATED DISABILITY CONCERNS

(a) Disability Concept: Overview and the Laws relating to Disability

The word "disability" comes from Latin and Old French. The term has its origin in the Latin *dis-* meaning "apart" or "away" and *habilis* meaning "able" or "capable".⁸ Combine these roots, and one could surmise that the meaning is something like "not able", or "lacking

⁴ American Association on Intellectual and Developmental Disabilities, Definition of Intellectual Disability.

⁵ See generally, UN Committee on the Rights of Persons with Disabilities, General Comment No. 3 (2016) on Women and Girls with Disabilities.

⁶ The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016.

⁷ See generally, Medical Termination of Pregnancy Act, 1971.

⁸ Oxford English Dictionary, Disability.

ability". The word also passed into Middle English by way of Old French, from *disabilite*, which also meant an incapacity or lack of ability.⁹

Over the years, the etymological meaning of "disability" began to stand for the state of being incapacitated or deprived of the ability to perform certain functions or activities, which later came to mean the broad spectrum of physical, mental, and emotional conditions that may hinder an individual's ability to participate in society.¹⁰

The legal governance of disability in India is primarily under the Rights of Persons with Disabilities Act of 2016, which is intended to uphold the rights and dignity of persons.¹¹

(b) Reproductive Autonomy in Women with Intellectual Disabilities

Reproductive rights present very specific challenges to women with intellectual disabilities.¹² These hurdles arise from stigma, ignorant attitudes, and outright barring from access to reproductive health care. Typically, women with intellectual disabilities are presumed unable of giving informed consent for anything connected with their bodies and reproductive health.¹³ Paternalistic attitudes are an undesired consequence of such a perception being held by caregivers and health providers. Such a view renders the woman with intellectual disability incapable of exercising her own agency and thereby inhibits her from securing contraceptives, from getting prenatal care, or from caring for safe abortions.¹⁴

So, reproductive health remains a shadowy realm, the people occupying it unaware of being manipulated into unwanted pregnancies or a greater chance of sexual abuse.¹⁵ A few laws provide for the protection of women. However, these do not really confer on women the strength to stand up and fight for their rights.¹⁶

(c) Illustrations of Women's Reproductive Rights with Intellectual Disabilities

Several obstacles to the exercise of reproductive rights in many societies where the legal and cultural support systems fail to be adequate.

For example, a young woman from an isolated region in India was impregnated by rape. She wanted to go through with an abortion, yet the service was beyond her reach because the

⁹ Merriam-Webster Dictionary, Disability.

¹⁰ See generally, World Health Organization, World Report on Disability (2011).

¹¹ The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016.

¹² See generally, UN Committee on the Rights of Persons with Disabilities, General Comment No.3 (2016) on Women and Girls with Disabilities.

¹³ American Psychological Association, Guidelines for Psychological Practice with Girls and Women.

¹⁴ See generally, World Health Organization, Reproductive Health and Rights of Women with Disabilities (2018).

¹⁵ United Nations Population Fund, The State of World Population 2018.

¹⁶ The Rights of Persons with Disabilities Act, 2016.

providers themselves lacked knowledge, and the laws required her parents' consent among other things.¹⁷ That case reflects not only a personal tragedy but also a larger systemic failure that ignores the agency and rights of women with intellectual disabilities.

In another case, a woman possessing this sort of cognitive disability went into a healthcare facility seeking contraceptive advice. They did not help her but instead gallantly treated her as someone whose capacity to make such decisions could be questioned.¹⁸ This is a classic example of what is an unfair assumption: that women with intellectual disabilities cannot comprehend or participate in decisions concerning their reproductive health. Such attitudes cause the discrimination against them, denying them their very basic health services.

Alarming reports indicate that sterilizations are still carried out under the pretext of supposedly protecting such women from further harm.¹⁹ These are very serious human rights infringements. Advocacy organizations argue that these practices are unethical and are deeply embedded in an outdated attitudinal framework that deny autonomy to persons with disabilities.²⁰

These cases in reality emphasize the need for urgent change. Updating of legal frameworks to allow women with intellectual disabilities to make choices about their reproductive health without obstacles is the immediate requirement. In parallel with reforms in laws, there must also be large-scale awareness campaigns, training of health practitioners, and setting up mechanisms that will empower rather than control the women.²¹

Taking cognizance of these features and embarking on strong steps to protect, ensure reproductive rights, promote and sustain the next leg of an inclusive society where every woman, regardless of whether she has an intellectual handicap or not, is respecting and accorded the dignity of making choices about her body.

III. INTERNATIONAL STANDARDS FOR THE REPRODUCTIVE RIGHTS OF WOMEN WITH INTELLECTUAL DISABILITIES

The reproductive rights of women with intellectual disabilities are asserted in various international human rights instruments with the spirit of ensuring equality, dignity, and autonomy.²² These standards insist on the creation of legal and policy regimes that, with

¹⁷ Human Rights Watch, *A Matter of Life and Death: Abortion in India* (2018).

¹⁸ American Psychological Association, *Guidelines for Psychological Practice with Girls and Women*.

¹⁹ United Nations Population Fund, *The State of World Population 2018*.

²⁰ See generally, Disability Rights International, *The Right to Make Choices: A Report on the Rights of Women with Disabilities* (2019).

²¹ See generally, UN Committee on the Rights of Persons with Disabilities, *General Comment No.3* (2016).

²² United Nations, *Convention on the Rights of Persons with Disabilities*, adopted 13 December 2006,

inclusivity, enable women with disabilities to fully enjoy their reproductive rights.²³ One of the most significant developments in this area is the adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2006.

Unlike any previous treaty, this landmark treaty affirms the rights of persons with disabilities, in particular their right to make decisions about their own reproductive health.²⁴ Article 23 of the CRPD recognizes the specific rights of persons with disabilities to marry and found a family, including access to reproductive health services. It demands that such services be provided only with informed consent and without discrimination, particularly in cases of sterilization or family planning.²⁵

Further, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979, also plays a crucial role. CEDAW deals with a wider category of gender-based discriminations and put forth the access of women to health-related services, including reproductive and family planning services.²⁶ It is, thus, not specifically directed towards disabilities, yet its comprehensive set of provisions is inclusive enough for the protection of women with disabilities.

Together, these conventions reflect the international commitment to safeguarding the reproductive autonomy of all women, including those with intellectual disabilities. They call upon States parties to eradicate systemic and structural barriers, raise awareness, and support an enabling environment that ensures an informed choice of healthcare; dignity; and equality.²⁷

Nonetheless, despite the existence of these global frameworks and mechanisms, many women with intellectual disabilities continue to suffer the effects of the deficiencies in national laws, awareness, and stigma.²⁸ It is time, then, to pursue the alignment of domestic policies with international standards in order to build inclusive reproductive healthcare systems on human rights grounds.

A/RES/61/106.

²³ J. Smith & L. Jones., The Rights of Women with Disabilities, 15(1) *International Journal of Disability and Human Development* 45-59 (2016).

²⁴ Deirdre F. McCarthy., Reproductive Rights and Persons with Intellectual Disabilities, 32(4) *Disability Studies Quarterly* (2012).

²⁵ Convention on the Rights of Persons with Disabilities, Article 23; United Nations, Report of the Special Rapporteur on the rights of persons with disabilities, A/HRC/25/29 (2014).

²⁶ United Nations Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24, UN Doc A/54/38/Rev.1 (1999).

²⁷ United Nations, Together we can: Eliminate Discrimination Against Women and Girls with Disabilities, UN Doc a/74/243, (2019).

²⁸ M.H. Williams., Barriers to Reproductive Rights for Women with Disabilities, 28(5) *Journal of Women's Health* 677-684 (2019).

Recent trends in International Law have seen a series of acts taking place lately, bolstering the reproductive rights of women with intellectual disabilities.²⁹ The SDGs, and specifically Goal 5, are set at achieving gender equality and empowering all women and girls, including those with disabilities.³⁰ Awareness on rights of sexual and reproductive health should be spread across in the right terms that will empower women with intellectual disabilities.³¹ While these provisions may seem adequate on paper, there remain a number of urgent issues on the ground regarding their implementation.

Women with intellectual disabilities face systematic barriers to accessing reproductive and health services. Stigma against these women in society, poor awareness about these women among service providers, and apparently incompetent legal frameworks that are, in truth, inadequate to safeguard the rights of these women-a few examples of such barriers.³² To illustrate, medical practitioners often harbor erroneous assumptions about what women with intellectual disabilities are capable of, dismissing them on grounds that they cannot, or should not be allowed, to decide on matters concerning their reproductive health. These violations extend to coercive acts such as forced sterilization, and denial of contraception are still reported in several countries.³³ An advocacy group has reported and continues to report that in different instances in different countries, these people are applied to women with intellectual disabilities under claims of protecting them from potential harm, which in reality strips them of their reproductive rights and autonomy.

IV. INDIAN LAWS, ACTS, AND REGULATIONS PROMOTING THE REPRODUCTIVE RIGHTS OF WOMEN WITH INTELLECTUAL DISABILITIES-

Various laws and regulations in India promote the reproductive rights of women with intellectual disabilities. However, of late, there have been discussions concerning the need for amendments in order to give effect to these rights and remove some barriers to them.

(i) Constitutional Provisions

The Constitution has provided a strong guarantee for human rights, including those women with intellectual disability.

²⁹ United Nations, Achieving Gender Equality and Empowering Women and Girls, Goal 5 of the Sustainable Development Goals, UN Doc A/RES/70/1 (2015).

³⁰ Ibid.

³¹ S.K. Choudhury., Empowering Women with Intellectual Disabilities in Reproductive Health, 30(4) *Journal of Disability Policy Studies* 224-232 (2020).

³² International Disability Alliance, Empowering Women and Girls with Disabilities to make Informed Choices (2021).

³³ R.J. Cook., Coercive Sterilization of Women with Disabilities: Human Rights Violations, 383 (9922) *The Lancet* 1476-1478(2014).

According to Article 14 all persons are equal before the law and are entitled to equal protection of laws within the territory of India.³⁴ It does not allow discrimination against any individual or group based on the grounds of religion, race, caste, sex, or place of birth.³⁵ Thus, safeguards also be extended to women with disabilities.

Article 15(1) prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth.³⁶

Article 21 guarantees the right to life and personal liberty, and it has been interpreted to mean the right of the people to decide for themselves on the matter of their own body and reproductive health.³⁷

These provisions in the constitution are an ideal set of provisions upon which further legislation can be put in place for the promotion of the reproductive rights of women with intellectual disabilities.

(ii) Key Legislations-

(a) The Medical Termination of Pregnancy Act, 1971-

An Act by this name is an important manifestation of legislation in India that sets forth the circumstances under which a woman may lawfully terminate her pregnancy. The original Act permitted abortion only under specific circumstances such as when the continuation of the pregnancy would endanger the life of the pregnant woman or her physical or mental health or would result in fetal abnormalities.³⁸

Subsequently, the circumstances of allowing an abortion were widened upon amendments to the MTP Act, primarily the MTP (Amendment) Act, 2021.³⁹ Abortions are now done up to 20 weeks of pregnancy for certain categories of women such as minors, survivors of rape or incest, and up to 24 weeks for certain categories of vulnerable women, including persons with physical disabilities and persons with intellectual disabilities.⁴⁰

These amendments affirm the reproductive rights of persons with intellectual disabilities by assuring them safe abortion services without any undue barriers, thereby creating new spaces for such persons to assert the right to autonomous reproduction and make informed choices

³⁴ Constitution of India, 1950, Article 14.

³⁵ Ibid.

³⁶ Constitution of India, 1950, Article 15(1).

³⁷ Constitution of India, 1950, Article, 21.

³⁸ The Medical Termination of Pregnancy Act, 1971, No. 34 of 1971, Section 3.

³⁹ The Medical Termination of Pregnancy (Amendment) ACT, 2021, which expanded the conditions under which abortions can be performed.

⁴⁰ Ibid., Section 3 (2), which specifies the time limits for abortion for certain categories for women.

regarding their reproductive health. Yet the insistence on consent either from guardians or family members for women with intellectual disabilities remains contentious because of the potential to impoverish such persons' autonomy and foster obstacles to the exercise of their reproductive rights.

(b) The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act, 1999-

This landmark legislation in India seeks to uplift the welfare and rights of persons with specific disabilities, including intellectual disabilities. While the principal focus of the Act is on the welfare, rehabilitation, and empowerment of persons with disabilities, reproductive rights are implied in that the Act places emphasis on the need for systems that enable individuals to make decisions in the best interest of their lives, which may include reproductive health.⁴¹

With respect to reproductive rights, the Act calls for establishment of a National Trust that shall provide such services as education, vocational training, healthcare, etc., which are necessary for the empowerment of women with intellectual disabilities so that they understand and exercise such rights.⁴² It further contributes to the impartment of policies and programs for awareness and education in reproductive health so that the course of action on an individual level can be taken after an informed decision. Still, because reproductive rights are not directly addressed by the Act, there needs to be more laws and reforms to protect the provision of reproductive health services to women with intellectual disabilities and to protect their reproductive autonomy.⁴³

(c) The Rights of Persons with Disabilities Act, 2016-

An Act is a comprehensive law in India passed to protect and promote human interests and dignity, which include persons with intellectual disabilities.⁴⁴ It has provisions recognizing the reproductive rights of people with disabilities, including the right to bodily integrity and health.⁴⁵ Therefore, the law emphasizes the need for informed consent and also immunizes a person with a disability from any coercion or discrimination in making reproductive decisions.⁴⁶ Furthermore, the law constitutes support services for persons with disabilities

⁴¹The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act, 1999, No. 44 of 1999.

⁴² The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act, 1999, No. 44 of 1999, Section 3.

⁴³ See generally, UN Committee on the Rights of Persons with Disabilities, General Comment No. 3 (2016).

⁴⁴ The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016,

⁴⁵ The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016, Section 4.

⁴⁶ The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016 Section 5.

toward accessing reproductive health services, reproductive health education, and reproductive health information that enable them to effectively exercise the said rights.⁴⁷

Further, the law forbids discrimination against women with disabilities in all forms, including health, thereby reinforcing their rights to safe and appropriate reproductive health services.⁴⁸ But while there is a strong legal framework provided for under this Act for furtherance of the rights of such women, much has to be done in terms of implementation, given the social attitudes that have taken root and the service delivery of healthcare that is ill-equipped.

(d) The Mental Healthcare Act, 2017

The Act stands as a landmark in the framework of the Indian administration for the protection of rights of persons with mental disorders, including countries with intellectual disabilities.⁴⁹ One of such main issues is that there be free and informed consent by any individual for medical care and treatment, also referring to reproductive rights under the Act.⁵⁰ It actually declares the individual to be autonomous, and therefore will have the right to give consent, refuse a treatment, or make decisions about treatment concerning reproductive rights itself.⁵¹ Moreover, it states that individuals must have information to the extent that they themselves can arrive at a decision about matters concerning their own body and reproductive rights.⁵²

The Act also bars discrimination against persons suffering from mental illness for equal access to reproductive health care for women with intellectual disabilities.⁵³ This Act envisages additional support measures for the defense of their rights as well as for making informed choices-at this moment- therewith further enabling persons.⁵⁴ For the achievement of the really enabling environment where these women can fully exercise reproductive rights, it is very important that they are well implemented.

Thus, the legal landscape in India with regard to reproductive rights of women with intellectual disabilities is one of an evolution, with notable legislations being enacted towards promotion of these rights. However, certain hindrances are faced in getting these laws really implemented. Hence, for Awakening and awareness, advocacy must continue.so that women with intellectual disabilities are able to fully exercise their reproductive rights and make informed decisions pertaining to their health and body.

⁴⁷ The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016 Section 6.

⁴⁸ The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016 Section 7.

⁴⁹ The Mental Healthcare Act, 2017, No. 10 of 2017.

⁵⁰ The Mental Healthcare Act, 2017, No. 10 of 2017, Section 2(g).

⁵¹ The Mental Healthcare Act, 2017, No. 10 of 2017, Section 3.

⁵² The Mental Healthcare Act, 2017, No. 10 of 2017, Section 4.

⁵³ The Mental Healthcare Act, 2017, No. 10 of 2017, Section 5.

⁵⁴ The Mental Healthcare Act, 2017, No. 10 of 2017, Section 6.

V. FUNDAMENTAL ISSUES

Reproductive rights for intellectually disabled women are often not recognized or respected, creating monumental challenges for these women. The key points below highlight the core issues relating to the subject:

(i) Lack of awareness and understanding

Women with intellectual disabilities often carry a stigma in society that harms their autonomy and reproductive rights. Misconceptions about their capabilities serve to create discrimination and exclude them from reproductive health dialogue. Many women with intellectual disabilities are not sufficiently educated in reproductive health and, therefore, do not know about their rights and the services to which they may have access.⁵⁵

(ii) Inadequate legal framework and protections

While laws like the Rights of Persons with Disabilities Act, 2016, and the Mental Healthcare Act, 2017, do exist, their enforcement is often so weak that even awareness of them does not exist at the ground level. Instances of sterilization and abortion against the will of women are smuggled into the limelight, both of which stand in contradiction to the objective of the legal framework of protecting the reproductive rights of women with intellectual disabilities.⁵⁶

(iii) Barriers to healthcare access and attitudes of healthcare provider

Barriers from all points, physical, financial, and informational, stand in the way of women with intellectual disabilities from getting their reproductive health needs met—professionals include contraception, prenatal care, and safe abortion. Some health practitioners harbor prejudices and preconceived notions about what women with intellectual disabilities can do, which result in poor treatment with scant support.⁵⁷

(iv) Informed Consent and Autonomy

Some caregivers and healthcare providers may adopt paternalistic attitudes because they question the capacity of many women with intellectual disabilities to give informed consent. Still, women with intellectual disabilities have the right to decide for themselves concerning their bodies and reproductive health, but societal and institutional barriers usually undermine

⁵⁵ See generally, World Health Organization, *Reproductive Health and Rights of Women with Disabilities* (2018).

⁵⁶ See generally, Disability Rights International, *The Right to Make Choices: A Report on the Rights of Women with Disabilities* (2019).

⁵⁷ See generally, United Nations Population Fund, *Women with Disabilities: A Global Perspective on Reproductive Health*, (2018).

this right.⁵⁸

(v) Sexual abuse and exploitation

Women with intellectual disabilities are more vulnerable to sexual abuse and exploitation, and such abuse can result in unintended pregnancies along with more violations of their reproductive rights. Most women are not in a position to avail themselves of support services that could have helped them report abuse and seek justice, aggravating the predicament.⁵⁹

(vi) Need for comprehensive sex education

There is an urgent necessity to design comprehensive sex education programs targeted at women with intellectual disabilities while taking into account their unique needs and rights. Awareness about the reproductive health of women with intellectual disabilities goes a long way toward empowering them to make decisions with full accountability for their rights.⁶⁰

(vii) Intersectionality and Discrimination

There exist intersectional but compound discriminations posed upon these women in basis of gender, disability, and socio-economic status that may hinder their acquisition of reproductive rights. Disability and gender-based discriminatory cultural attitudes pose yet another barrier to the acquisition of reproductive rights of women with intellectual disabilities.⁶¹

VI. JUDICIAL TRENDS PERTAINING TO THE RIGHTS OF REPRODUCTIVE WOMEN WITH INTELLECTUAL DISABILITIES

The Indian judiciary has played a key role through various landmark decisions in the promotion and protection of reproductive rights of women with intellectual disabilities. Specifically, these rulings have interpreted existing laws and have, therefore, set precedents on views of autonomy, informed consent, and the right to make decisions with respect to one's own body.⁶² The following discussion will ascertain the important case laws showing the judiciary's commitment to protecting the reproductive rights of women with intellectual disabilities.

⁵⁸ See generally, World Health Organization, *Disability and Health: A Global Perspective* (2019).

⁵⁹ See generally, United Nations, *The Right to Live Free from Violence: A Guide for Women with Disabilities* (2020).

⁶⁰ Laura B. Mitchell., *Sex Education and Women with Intellectual Disabilities: Addressing Unique Needs and Rights*, 61(4) *Journal of Intellectual Disability Research* 389-398 (2017).

⁶¹ Sheila R.P.O' Keefe., *Intersectionality and Reproductive Rights: The Experience of Women with Intellectual Disabilities*, 33(3) *Disability and Society* 320-334 (2018).

⁶² Neha S. Rao., *Judicial Activism in India: The Role of Courts in Advocating for the Rights of Women with Disabilities*, 12(1) *Journal of Law and Social Justice* 45-67 (2020).

In *Bodhisattwa Goutam v. Miss Subhra Chakraborty* (1996)⁶³, the emphasis was on sexual violence, although the rights of women with disabilities were recognized. The Supreme Court held with great emphasis that a woman with disability has to be treated with sensitivity, considering her vulnerability and the need to protect her rights.

Then, a landmark case from India, *Vishaka v. State of Rajasthan* (1997)⁶⁴, which dealt mainly with sexual harassment, gave important pronouncements for the protection of treating women in the workplace and hence, by implication, supported women with disabilities and their reproductive rights. It would be held that a woman must be able to live with rights in an environment free from violence or discrimination.

In recent times, the Indian judicial system has taken significant strides in addressing reproductive rights of women carrying the label of intellectual disabilities.

Although *G.M. and Others v. Moldova* (2021)⁶⁵ is an origin in European jurisdiction, it has left a deep imprint on Indian jurisprudence. The judgment elucidated that a disabled person is discriminated against in reproductive health vis-à-vis others by the European Court of Human Rights. This judgment is cited on several occasions.

In India's courts, the rights of intellectually disabled women have been urged, reflecting the necessity of laws to respect the autonomy of such persons.

In the year 2022, the Supreme Court of India in *X v. The Principal Secretary Health and Family Welfare Department & Anr.*⁶⁶ once reaffirmed that a woman with an intellectual disability has the right to actualize self-determination in reproductive health matters. Any woman with intellectual disability desired to terminate her pregnancy. The Court stated that the only individual who could decide upon matters about her body and reproductive health was the person with the informed consent of the affected party. The Court further stated that the State's job was to protect women with disabilities from coercive measures and to respect their reproductive rights.

Hence, while the Indian Judiciary, through landmark judgments and statutes, has brought revolutionary changes to the reproductive rights of women with intellectual disabilities, the implementation of rights is difficult to work out, with incessant attraction and supervision on one end.

⁶³ *Bodhisattwa Goutam v. Miss Subhra Chakraborty* (1996) 1 SCC 490 (India).

⁶⁴ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241 (India).

⁶⁵ *G.M. and Others v. Moldova*, App. No. 2/19375/13, European Court of Human Rights, Judgement dated 16 December 2021.

⁶⁶ *X v. The Principal Secretary Health and Family Welfare Department & Anr.*, (2022) 4 SCC 138 (India).

VII. THE PRESENT SCENARIO OF REPRODUCTIVE RIGHTS OF WOMEN WITH INTELLECTUAL DISABILITIES IN INDIA

The granting of rights in the sphere of reproduction is something that has attracted much attention, particularly from the perspective of intellectually disabled females in India, and the specter of wider considerations pertaining to gender equality, disability rights, et al.⁶⁷ Although enormous strides have been undertaken to lay down a robust legal foundation and raise awareness about the matter, lucid impediments seem to bar the full attainment of reproductive rights to the intellectually disabled females. The paper is an attempt to track the present situation and then look into areas depicting lone dolmen-inequalities in law, socioeconomic conditions, access to healthcare, and other challenges that persist.

India has taken numerous steps towards enacting laws for protecting the reproductive rights of females with intellectual disability. However, with legal frameworks in place, these laws mostly do not suffice when it comes to meeting the peculiar and complex needs of this vulnerable group.⁶⁸ On the contrary, in most cases, the laws get implemented in such manner that genuinely do not assure the actual exercise of reproductive rights for such women with intellectual disabilities because of some or all of the following reasons: social attitudes, ignorance, procedural bottlenecks.

Intertwining with reproductive rights acts, this area of law holds its core within the Medical Termination of Pregnancy Act of 1971⁶⁹, which enables abortion under certain conditions. While the Act establishes a legal framework for abortion, it does not invariably favor women with intellectual disabilities. Due to lack of clarity in the law and arbitrary decisions emanating from the interpretations of doctors or legal guardians, women with intellectual disabilities are often denied their basic right to safe and legal abortions. Sometimes their inability to give informed consent is questioned, which has been veiled under purportedly doing such women a favor through decisions taken without their active participation.

The enactment of the Rights of Persons with Disabilities Act in 2016⁷⁰ was one big leap in adopting the rights-based approach for persons with disabilities. While guaranteeing the right to equality and non-discrimination", the law also specifies that a person with disabilities must be able to exercise his or her capacity before the law, in particular, in decisions regarding

⁶⁷ Anishka K. Das., Reproductive Rights of Women with Intellectual Disabilities: Legal and Social Challenges in India, 29(2) *Indian Journal of Gender Studies* 101-120 (2022).

⁶⁸ Riya A. Sharma., Challenges in the Implementation of Reproductive Rights for Women with Intellectual Disabilities in India, 10(3) *Journal of Disability Studies* 45-63 (2021).

⁶⁹ The Medical Termination of Pregnancy Act, 1971, No. 34 of 1971, Section 3, Acts of Parliament, 1971 (India).

⁷⁰ Rights of Persons with Disabilities Act 2016, No.49 of 2016, Section 3, Acts of Parliament, 2016 (India).

reproductive health, which includes providing assistance where necessary so that she or he can make an informed decision and avail of services, which, in turn, fortifies the person's claims towards dignity and autonomy.

The Mental Healthcare Act, 2017⁷¹, further reinforces the concept of personal autonomy. It acknowledges individuals who have suffered from critical illnesses of the mind, including inquests into disability, to take decisions themselves regarding their treatment and care. The Act provides for principles of informed consent, which come into play with reproductive health matters. Legal recognition of this nature, therefore, infers the notion that women with intellectual disabilities should exercise their reproductive choice freely but will require assistance to fully understand and realize these rights.

Yet, in spite of the above-mentioned acts, the lived realities of women with intellectual disabilities in India show gaps between law and its implementation.⁷² Social stigma being the attitude towards these women; unavailability of adequate health infrastructure; paucity of trained resource persons; and the unawareness of caregivers and medical practitioners alike have all compounded into barriers that impede the full realization of these legal rights. Hence, though an important legal milestone has been achieved, much remains to be done so that their reproductive rights in the case of women with intellectual disabilities may, not only be protected in law but are also exercised in practice.

Intellectually-disabled women unfold vulnerable situations while trying to kind of navigate reproductive health issues.⁷³ Their limited intellectual abilities might subject them to maybe abuses, unfair treatments, and depriving them of even the choice of reproduction. Such women may or may not really stand in need of protection or guidance in countering coercion or in resisting against the imposition of someone else's will on them, this leaves a large door to be opened to their manipulation or their violent exploitation. Under such circumstances, the right to self-determination regarding one's body would become more of a privilege than a human right.

It also remains an additional challenge for women with intellectual disabilities when they struggle to access reproductive healthcare in India.⁷⁴ They generally face an intricate maze of roadblocks barring them from timely medical care or necessary support. One such roadblock

⁷¹ The Mental Healthcare Act, 2017, No. 10 of 2017, Section 2, Acts of Parliament, 2017 (India).

⁷² Priya Tiwari., Bridging the gap: Implementation of Legal Rights for Women with Intellectual Disabilities in India, 8(2) *Journal of Law and Public Policy* 134-150 (2021).

⁷³ Seema R. Joshi., Navigating Vulnerability: The Reproductive Rights of Intellectually Disabled Women, 22(1) *Health and Human Rights Journal* 15-27 (2020).

⁷⁴ Radhika S. Sharma., Access to reproductive Healthcare for Women with Disabilities in India: Barriers and Solutions, 9(10) *International Journal of Health, Policy and Management* 457-463 (2020).

is that of non-physical access within healthcare institutions. With most clinics and hospitals not physically adapted to accord equal access to persons with disabilities, this logistical barrier acts as a deterrent or outright prevents many women from seeking health care. The trip to the centres is already a huge task in itself, physically and emotionally.

A financial element adds yet another layer to an already aggravating problem.⁷⁵ To say these women with intellectual disabilities rarely find space in healthcare spending in poor households is probably the biggest understatement ever. Families tend to get educated on other expenditures, ignoring the reproductive health needs of these women. Economic marginalization fosters such negation, which further translates into neglect: preventive care, regular check-ups, or emergency medical treatment being delayed or outright denied.

Another problem is the attitude of health workers.⁷⁶ In many instances, medical practitioners are not adequately trained to work effectively with the intellectually disabled. Their temperance may create barriers of communication, prejudice, even discrimination. Some of them might feel that these women can't understand and are unable to consent to decisions concerning their health; hence, a paternalistic perspective is taken denying them the right to be autonomous. Poor respect for and compassion toward these women mar their healthcare, while this becomes a roadblock for them and deepens their helplessness and feelings of exclusion.

A still uneasy fact remains, with many attempting to coerce through means of forced sterilization, forced abortion, etc., often without a real consent from the individual.⁷⁷ The violation of bodily sovereignty is another such instance of an outright unethical and illegal failure of protection and safeguarding of others. ID women are denied the very support they require to stand up and fight for their rights, emerging victorious while their own will is trampled upon. In neglecting them so blatantly, it is fundamentally assumed that this sector of society cannot even march for and control its own reproductive health; such an erroneous assumption may wreak havoc on the rest of their lives.

Several advocate groups in India have risen to affirm the reproductive rights of women with intellectual disabilities in response to their plight.⁷⁸ These groups attempt to eradicate the

⁷⁵ Anjali R. Verma., Economic Barriers to Reproductive Health for Women with Intellectual Disabilities in India, 41(3) *Journal of Family and Economic Issues* 523-537 (2020).

⁷⁶ Sunita K. RAOY., Attitudes of Healthcare Professionals Towards Individuals with Intellectual Disabilities: Implications for Care and Policy, 64(5) *Journal of Intellectual Disability Research* 345-357 (2020).

⁷⁷ Meera A. Nair., Forced Sterilization and Reproductive Rights of Women with Disabilities: A Critical Analysis, 35(6) *Disability and Society* 845-860 (2020).

⁷⁸ Kavita P. Singh., Advocacy and Awareness: Enhancing the Reproductive Rights of Women with Intellectual Disabilities in India, 31(2) *Journal of Disability Policy Studies* 79-89 (2021).

lingering stigma and stereotypes so often dominating the public psyche. They engender understanding and acceptance within society at large through an array of awareness campaigns and community-based activities. Part of their work is also directed toward educating healthcare providers about the needs of these women; ensuring that professional care is competent and compassionate.

Efforts are being made to promulgate legal reforms by lobbying for laws that better reflect the reality of women with intellectual disabilities.⁷⁹ The policy is being fought for so that reproductive health issues affecting the barriers to these women are considered, as opposed to being considered under the general headings that concern disability. Although India has certainly made some commendable advances at putting together a legal framework supporting the rights of this class, the present case of the legal regime is quite disjoint on the ground.

Change must mean more to society than just enacting laws: Intellectual disabled women are perceived and treated differently, especially in reproductive health matters, which are personal and highly significant.⁸⁰

VIII. CONCLUSION AND SUGGESTIONS

Giving reproductive rights to girls and women with intellectual disabilities in India lies at the crucial intersection of gender, disability, and human rights. Multiple legal frameworks stand in place to protect these rights, yet the biggest barriers come in preventing women with intellectual disabilities from exercising reproductive choice. Of late, the Indian judiciary has played a very active role in recognizing these rights through monumental judgements. Still, social stigma, lack of healthcare, and coercion continue to erode the status of these rights.

Though the laws have come far in giving some hope of reproductive rights for women with intellectual disabilities, there is a need to enhance them to great levels wherein the reproductive rights will not only be recognized but also exercised practically. There is an acute level of scarcity of awareness amongst health practitioners, and social attitude itself questions whether a woman with a disability can have an option. This leads to more cases of violations of their rights. So, the solution would be a combination approach.

The following suggestions are put forward to effectively address this issue:

⁷⁹ Anjali T. Rao., Legal Reforms for Women with Intellectual Disabilities: Addressing Reproductive Health Needs in India, 12(1) *Indian Journal of Law and Justice* 115-130 (2020).

⁸⁰ Priyanka S. Mehta., Perceptions and Treatment of Intellectually Disabled Women in Reproductive Health: Challenges and Perspectives, 13 *International Journal of Women's Health* 225-235 (2021).

(i) Enhancing legal protections-

The proposed amendment aims to protect the reproductive rights of women with intellectual disabilities, upholding their autonomy by ensuring that both informed consent and guardianship laws do not undermine it.

(ii) Awareness and Education

Combine awareness campaigns with educational programs that promote the understanding of reproductive rights for women with intellectual disabilities, combat stigma, and promote autonomy and informed consent.

(iii) Training for Healthcare Professionals

Specialized training programs are to be designed to instill proper knowledge on different aspects and requirements of care including respect for the women with intellectual disabilities and providing non-discriminatory care.

(iv) Awareness and Education

Combine awareness campaigns with educational programs that promote the understanding of reproductive rights for women with intellectual disabilities, combat stigma, and promote autonomy and informed consent.

(v) Strengthening Support Systems

Create support networks and advocacy groups that will assist women with intellectual disabilities in navigating the healthcare systems and asserting reproductive rights, concerning resources, counseling, and legal remedies.

(vi) Access to Comprehensive Sex Education

Implement individualized sex education programs for girls and women with an intellectual disability to help them understand their rights and make informed decisions about their reproductive health.

(vii) Monitoring and Accountability

Put into action mechanisms to monitor reproductive rights laws and policies vis-à-vis women with intellectual disabilities so that healthcare providers and institutions are held accountable to comply with the legal standards.

(viii) Engaging Stakeholders

Work collaboratively with government agencies, NGOs, and advocacy groups towards promoting reproductive rights of women with intellectual disabilities to ensure it is well

represented in policy advocacy and resource allocation.

Therefore, promoting the reproductive rights of girls and women with intellectual disabilities in India requires a concerted effort from all sectors of society. Improving laws and legal frameworks, raising awareness, safeguarding access to qualified healthcare, and assuring proper education will do a world of good toward promoting an inclusive framework that respects the reproductive rights of all women irrespective of their disabilities. In addressing these concerns, it is not only a legal obligation but also an integral element toward attaining gender justice and social equity in the country.
