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### (B) Description of Module

Items	Description of Module
Subject Name	Women's Studies
Paper Name	Women and the Law
Module Name/ Title	Women and disability laws
Module ID	Paper-7, Module-32
Pre-requisites	For understanding the module, an awareness of the problems faced by persons who are differently abled
Objectives	The main objective of the module is to draw attention to the laws regarding disability with a focus on women

### Women and Disability Laws

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## **Women and Disability Laws**

### **1. Introduction**

Persons with disability are most disadvantaged section of society. They suffer enormous discrimination regarding access to education, employment etc. They often lack the opportunities of mainstream population and are usually among the most marginalized in society. Being female and having a disability, whether serious or not, is usually enough to put the individual in a very disadvantaged situation. Women with physical or mental disability are often denied equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination.

The Constitution of India premised on the principle of social justice and human rights. It mandates the State to accord justice and equality to all members of the society in all the facets of human activity. In India there are four other legislations specifically directed towards the protection, welfare, rehabilitation and development of people with disabilities. However these enactments are covering all respective issues of disability but remain silent on the discrimination and violence faced by women with disabilities that differentiate their situation from men with disabilities.

India has ratified the United Nation Convention on the Rights of Persons with Disabilities, 2006 (UNCRPD), in September; 2007, which is emphasizing on issues of multiple discrimination against women with disabilities. Further in order to incorporate the significant provisions enshrined in the UNCRPD (2006) in our national legal frame work Indian parliament has drafted a bill named as "THE RIGHTS OF PERSONS WITH DISABILITIES BILL, 2014"

## **2. Status of Women with Disabilities**

Girls and women of all ages with any form of disability are among the most vulnerable and marginalized group of society. Despite their significant numbers, they remain hidden and silent, their concerns unknown and their rights unrecognized. Women with disabilities carry society's cross on their backs and they face triple discrimination because of their disabilities, gender and poverty. They are commonly stereotyped as sick, helpless, childlike, dependent, incompetent and asexual, greatly limiting their options and opportunities. They are subjected to physical, psychological, sexual and financial violence, neglect, social isolation, trafficking, institutionalization, degradation, detention, denial of health care and forced sterilization and forced psychiatric treatment. They are at high risk of gender-based and other forms of violence based on social stereotypes and biases that attempt to dehumanize them. Violence

against them occurs in various spheres, including in the home and the community. The forms of violence to which women and girls with disabilities are subjected are varied and represent intersectional and multiple discrimination based on gender and disability.

Across the globe, forced sterilization is performed on young girls and women with disabilities for various purposes, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention (including pregnancy that results from sexual abuse). The practice of forced sterilization has been debated and justified by governments, legal, medical and other professionals, and family members and carers as being in the best interests of women and girls with disabilities. However, arguments for their best interests often have little to do with the rights of women and girls with disabilities and more to do with social factors, such as avoiding inconvenience to caregivers, the lack of adequate measures to protect against the sexual abuse and exploitation of women and girls with disabilities, and the lack of adequate and appropriate services to support women with disabilities in their decision to become parents. Systemic prejudice and discrimination against women and girls with disabilities continues to result in widespread denial of their right to experience their sexuality, to have sexual relationships and to found and maintain families.

The educational arena is also part of a larger picture of double discrimination based on gender. Women and girls with disabilities fare less in the educational arena than either their disabled male or nondisabled female counterparts. Further, in employment, women with disabilities often experience unequal hiring and promotion standards, unequal access to training and retraining, unequal access to credit and other productive resources, unequal pay for equal work and occupational segregation. Moreover disabled women are less likely than disabled men to make use of many existing social services, including residential services, due to social, cultural and religious factors. The problems that confront women with disabilities are even more severe in the rural areas due to lack of information, awareness, education, income, and contact resulting in extreme isolation and invisibility.

Crime against disabled girls and women are also frequently unreported because they and their families have no courage or strength to report these to police. Public awareness about such matters consequently remains low and follow-up action on their behalf does not take place. The situation of women with disabilities in respect of access to justice and protection from abuse is also aggravated by the impact of the combined effects of both gender and disability. They even lack access to legal protection and representation as law enforcement

mechanisms and national or level legislations, policies are ill-equipped to address their issues. Although some progress has been made in improving the status of women in general, disabled women have remained a largely ignored group. Equality of opportunity and treatment for women has yet to be achieved in most societies.

### **3. International Legal Framework for the Protection of Rights of Women with Disabilities:**

#### **(I) Human Rights Instruments and Treaties**

Prior to the drafting of the disabilities Conventions, there was no International treaty dealing specifically with the human rights issues of persons with disabilities. The equality clauses of three central human rights instruments of UN: The Universal Declaration of Human Rights (1948), the International Covenant for Civil and Political Rights (1966) and the International Covenant for Economic, Social and Cultural Rights (1966), do not mention disability as a protected category. If disability is addressed as a human rights issue in these documents it is only in connection with social security and preventive health policy. In addition to these three universal treaties, the United Nations General Assembly has enacted four hard law treaties protecting people based specific identity characteristics unrelated to disability - the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of against Discrimination Women (CEDAW); the Convention on the Rights of Child (CRC); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPMW). Among these treaties, only CRC contains a specific disability related article; it requires that state parties recognize the rights of children with disabilities to enjoy full and decent lives and participate in their communities.

#### **II. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)**

In Dec.2006, the UN adopted Convention on the Rights of Persons with Disabilities elaborating in detail the rights of persons with disabilities and setting out a Code of implementation. The International treaty is seen as marking a paradigm shift from charity or based approach, which views persons with disability as 'objects' of charity, medical treatment, and protection, to a rights-based approach of seeing them as 'subject' capable of

claiming their rights and making benefit of the new approach is that ,the disability proclaimed to be a mainstream issue, and their status will be reflected in national assessment of development and poverty reduction strategies and corresponding international frameworks. Article 1 of this UNCRPD defines persons with disabilities as those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The purpose of the convention is to promote, protect and ensure the full and equal enjoyment of all human rights by the persons with disabilities depending upon their needs and situations. It covers a number of key areas such as accessibility, personal mobility, rehabilitation and participation in political life etc.

The UNCRPD has also engaged with the issue of multiple discrimination faced by women with disabilities, by incorporating a dedicated article on women with disabilities and simultaneously, gender concerns have been addressed in certain other articles of the UNCRPD on issues of special concerns to disabled women. Article 6 of UNCRPD provides that states parties must recognize that women and girls with disabilities face multiple discrimination and must take all appropriate measures to ensure their full development , advancement and empowerment and for the enjoyment of all human rights and fundamental freedoms set forth UNCRPD. Apart from this special article, gender concerns find mentioned in the preamble and in article relating to general principles(Article 3(g)), awareness-raising(Article 8(b)), freedom from exploitation, violence and abuse(Article 16) , health( Article 25) ,and adequate standard of living and social protection Article (28(2)(b)).

India ratified the UN convention on the rights of persons with disabilities (UNCRPD) in September, 2007. It came into force on 3<sup>rd</sup> May 2008 and makes it obligatory on the part of the government to synchronize laws or legal provisions with the terms of convention.

### **3. Legal Framework for the Protection of Rights of Women with Disabilities in India:**

#### **(I) Constitutional Provisions**

The Preamble, the Directive Principles of State Policy and the Fundamental Rights enshrined in the Constitution stand testimony to the commitment of the State to its people. Although

according to Entry 9 in the List II of Schedule 7 of the Constitution, the subject of 'Relief to the disabled and unemployable' is the responsibility of the State Governments, in practice, the Central Government also has a major role to play in, this field. The Constitution, while protecting equality under Articles 14, 15 and 16, does not include disability as one of the categories of non-discrimination. Article 14 mandates that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Article 15 of the Constitution of India prohibits the State from discriminating on the basis of sex. The Article however contains a proviso stating that nothing in this Article should prevent the State from making special provisions for women. Article 16 lays down that the State shall not discriminate on the basis of sex with regard to equality of opportunity in matters of employment. Though the fundamental rights listed above, in a way, do not have a specific mention of the physically handicapped or disabled, yet they do pertain to the socially, economically and educationally backward class of people.

The only mention of protection of persons facing disability and sickness is made in the Directive Principles of State Policy in Chapter-IV of the Constitution. Article 39A enjoins the State to promote justice, on the basis of equal opportunities and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities Under Article 39 it also imposes a positive obligation on the State to endeavour to improve the status of women by providing for equal treatment of women and men in the policies of the State. Article 41 enjoins that the State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement. More specifically, Article 46 stipulates that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. These provisions envisage a very positive role for the State in the upliftment of the status of disadvantaged groups. It is important to clarify here that Fundamental Rights under Part III of the Constitution of India, are meant for the citizens and are enforceable in courts. Individual can move to court seeking legal assistance if Fundamental Rights are usurped by force. On the other hand, the Directive Principles of State Policy in Chapter-IV of the Constitution are not enforceable but under Article 37, its duty of the state to implement these principles in the governance of the country and in making laws.

## **( II) Specific Legislations**

### **(a) The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, shortly called as PWD Act, is the principal and comprehensive legislation concerning disabled persons. It has fourteen chapters dealing with various issues. . According to section 2(t) of the PWD Act, "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority. Further, the meaning of disability is described in section 2(i) stating that disability means blindness, low vision, leprosy-cured, hearing impairment, loco motor disability, mental retardation and mental illness. Under this Act Provisions have been made for the prevention of disabilities (Section 25), rehabilitation (Section 56) and social security (Section 66) of the disabled persons. PWD Act defines the responsibilities of Central and State Government with regard to the services for disabled persons. Under section 42, it contains provisions for providing aids and appliances to persons with disabilities by the appropriate Government. Provisions relating to education are contained in chapter V of the Act. Under section 30, PWD Act, mentioned certain specific provisions to be made available for people with disability such as removal of architectural barriers in schools, structuring of curriculum for children with disabilities. Chapter VI of PWDA, 1995 imposes duty on the Government to identification and reservation of the post for persons with disabilities, and establishment of special employment exchange, employers were required to maintain records and the vacancies which are not filled up to carried forward. Further under Section 38(b), it has also provision for relaxation of age-limit in respect of government employment. Section 33 of the PWD Act, confers special and preferential right on "Person with Disabilities" in government employment and inter alia provide 3 percent reservation of vacancies for person with disabilities, where 1% each is to be reserved for persons suffering from (1) blindness or low-vision, (2) hearing impairment and (3) locomotor disability or cerebral palsy. In so far as persons acquiring disability during the employment are concerned they are taken care of by enacting a provision like section 47 of PWD Act. Section 47(1) mandates that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. Further under section 47(2) it has been laid down that no promotion shall be denied to a person merely on the ground of his disability. Under Chapter VIII( Sections 44-47), PWD Act also recommends to create a barrier free environment by removing all type

of discrimination against persons with disabilities where they can share the development benefits which a normal persons enjoys.

The PWD Act is remarkable because for the first time in India the social and economic rights of disabled have been addressed by a statute. But it falls short to cover all the issues relating to rights of persons with disabilities, especially in preventing violence and exploitation against women with disabilities. After the ratification of the UNCRPD in September 2006, the government is under obligation to synchronize laws or legal provisions with the terms of convention. Further in order to incorporate the significant provisions enshrined in the UNCRPD,2006 in our national legal frame work Indian parliament has introduced a bill in 2014 in Rajya Sabha named as "THE RIGHTS OF PERSONS WITH DISABILITIES BILL, 2014"

**( b ) The Rehabilitation Council of India Act 1992**

Under this act, the Rehabilitation Council of India (RCI) has been constituted which is the government body, to regulate training programmes and courses targeted at disabled, disadvantaged, and special education requirement communities. It is the only statutory council in India that is required to maintain the Central Rehabilitation Register which mainly documents details of all qualified professionals who operate and deliver training and educational programmes for the targeted communities. In the year 2000, the Rehabilitation Council of India (Amendment) Act, 2000, was introduced and notified consequently by the government of India. The amendment brought definitions and discussions provided within the earlier Rehabilitation Council of India Act, 1992, under the ambit of a larger act, namely, PWD Act, 1995.

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

As certain groups among the disabled are more vulnerable than others, a special enactment for the protection of such persons, their property and well-being was felt necessary. The enactment of this Act aims to fulfil a common demand of families seeking reliable arrangement for their severely disabled wards. The specific objectives of the Act are to enable and empower persons with disabilities to live as independently and as fully as possible within and as close to the community to which they belong; to promote measures for the care

and protection of persons with disabilities in the event of death of their parent or guardian; and to extend support to registered organisations to provide need based services during the period of crisis in the family of disabled covered under this Act.

**( d ) The Mental Health Act, 1987**

The Mental Health Act predates the human rights emphasis in the nineties. It can be described as a civil rights legislation as it aims to regulate standards in mental health institutions and to make provisions with respect to their property and affairs. From a human rights perspective, it is to protect mentally ill persons from being subject to physical or mental cruelty during treatment.

**( 5 ) Rights of women with disabilities and concerning issues :**

These are some of basic rights of women with disabilities which have been recognised in the international and national legal instruments are:

**(i) Right to Education**

In the era of 21<sup>st</sup> century, the right to education has been considered to be one of the most valuable rights. Education is the most effective vehicle of social and economic empowerment. . But millions of children with disabilities worldwide are deprived of the right to attend school because of inaccessible schools, inadequately trained teachers, or lack of awareness among parents and school staff. Moreover, women and girls with disabilities fare less well in the educational arena than either their disabled male or nondisabled female counterparts. The combination of discrimination on the basis of both gender and disability results in low literacy for women and girls with disabilities.

Article 24 of UNCRPD ensures the right of persons with disabilities to education. Article 21A of the Indian Constitution guarantees education as a fundamental right. Further, right to education of the persons with disabilities has been recognized under the PWD Act. Section 26 of this PWD Act enjoins upon authorities to ensure appropriate environment till child attains the age of 18 years. In this PWD Act, a positive duty has also been casted on the appropriate governments to promote integrated education as well as special schools for the children with disabilities.

**(ii) Right to Employment**

Employment is a critical element of independent living but it is a major concern for persons with disabilities as most of the people with disabilities are either unemployed or under-employed. People with disabilities in general face difficulties in entering the open labour market, but, seen from a gender perspective, men with disabilities are almost twice as

likely to have jobs as women with disabilities. Women with disabilities seeking employment faced the double discrimination of gender and disability. Employers regard women with disabilities as unproductive workers who are unable to adjust to the workplace. Moreover When women with disabilities work, they often experience unequal hiring and promotion standards, unequal access to training and retraining, unequal access to credit and other productive resources, unequal pay for equal work and occupational segregation, and they rarely participate in economic decision-making.

Right to employment and opportunity of persons with disabilities has been recognized under Article 27 of UNCRPD. The significance of work and employment has been acknowledged in the Constitution of India under Article 16 the right to equality of opportunity in matters of employment; it accords similar opportunity to persons with disabilities. Under Article 39 of Indian constitution it has also been mandated to the State to direct its policy towards securing equal *right* to an adequate means of livelihood, equal pay for equal work for both men and women. Further Section 33 of the PWD Act confers special and preferential right on "Person with Disabilities" in government employment and inter alia provides 3 percent reservation of vacancies for person with disabilities.

### **(iii) Right to Barrier Free Environment**

Accessibility is considered as a wide concept that includes the prevention and elimination of obstacles that pose problems for persons with disabilities in using products, services and infrastructures. Barrier-free environment enables people with disabilities to move about safely and freely, and use the facilities within the built environment. Article 9 of UNCRPD, mandates to State parties to undertake appropriate measures to ensure equal access for persons with disabilities to the physical environment, transportation , information and communications including information and communications technologies, internet and other facilities and services open or provided to the public, both in urban and in rural areas .

There is no express provision in the Constitution guaranteeing the right to accessibility. Accessibility can be implied from the constitutional promise of equality of status and opportunity to all since without accessibility the various rights guaranteed by the constitution have little meaning for persons with disabilities. However, access without discrimination to public facilities, roads, places of culture and entertainment for persons with disabilities came into focus only with the enactment of PWD Act; it lays down duties on Government authorities in very clear terms for the creation of barrier free facilities within the limits of

their economic capacity. Under sections 45-46 of PWD Act, many measures have been encouraged to improve accessibility for people with disabilities.

#### **( iv ) Right to be Protected against Violence, Abuse and Exploitation**

Violence and abuse are serious problems for persons with disabilities, especially for women with disabilities, who are at greater risk than non-disabled persons. Women with disabilities tend to be more vulnerable to exploitation of various kinds, such as sexual harassment, domestic violence and exploitation in the workplace. They also tend to be relatively easy targets of sexual exploitation, particularly if they are mentally retarded. They are the easy prey for the exploitation within the family because of the relative isolation and anonymity in which women with disabilities live, the potential for physical and emotional abuse is high. At the same time, and because of their isolation, women with disabilities are likely to have fewer resources to turn to for help.

The UNCRPD has recognized the increased vulnerability of women with disabilities to abuse and exploitation by explicitly including the gender aspects of the freedom from exploitation, violence and abuse under Article 16. In India, the Protection of Women from Domestic Violence Act, 2005 is already in place to protect women who face domestic violence but there is a need to provide gender-specific measures to ensure protection of women with disabilities from abuse, violence and exploitation. Amendments may also be made in the Domestic Violence Act, 2005 to ensure that the protection provided is accessible to women with disabilities.

#### **( v ) Right to Integrity and Legal Capacity**

Under Article 17 of UNCRPD, it has been recognized that every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others. The right to integrity is basically the right about respecting the personhood of the individual and ensuring that she is able to exercise her fundamental rights. Self-determination is an important issue for women with disabilities. This right also ties with a number of other aspects relevant for disabled women. For example, in relation to health, it is significant in the context of right to choose, respect for consent, autonomy, etc. This right is also relevant in the context of protection from abuse. Thus, the recognition of the right to integrity specifically for women with disabilities is necessary in relation to the guarantee of these other rights and entitlements.

Further Articles 12 of UNCRPD recognizes the legal capacity of persons with disabilities on equal basis with others. The recognition of legal capacity is the foundation of current disability movement and is quintessential for a shift to right- based approach. Failure to recognize the autonomy and legal capacity of women with disabilities heightens their vulnerability. For example, in the case of forced sterilizations, in the absence of recognition of legal capacity the consent and choice of disabled women will not be respected. In Indian law there is no specific provision or law ensuring the legal capacity or right to integrity of persons with disabilities. But it may be covered under Article 21 of Indian constitution which is guaranteeing right to life.

( vi ) **Right to Privacy**

Article 22 of the UNCRPD guarantees the right to privacy. This protection has a wide ambit which includes privacy in family, home, correspondence, honour and reputation, and personal, health and rehabilitation information. All these facets of the right to privacy are significant in relation to women with disabilities as Issues of both bodily and sexual privacy are important for them. In India there is also no specific provision guaranteeing the rights to privacy, however again it may be covered under Article 21 of Indian Constitution.

( vii ) **Right to home and family**

Society undervalues women with disabilities by considering them as non-sexual, not suitable for marriage and incapable as mother. Because of such misconception they are less likely to get married. If they do get married, generally it is a compromised arrangement. Moreover across the globe they have been forced or coerced by medical personnel to submit to permanent and irreversible sterilization procedures. It is Systemic prejudice and grave violation of human rights of women and girls with disabilities and can be described as acts of torture and cruel, inhuman, and degrading treatment. It results in widespread denial of their right to experience their sexuality, to have sexual relationships and to found and maintain families which may lead to extreme social isolation and lifelong grief.

Article 23 of UNCRPD requires the States Parties to take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others. This right to marry, family and home comes under Article 21 of Indian Constitution.

### **(viii) Right to Health**

Women with disabilities, of all ages, often have difficulty with physical access to health services. Article 25 OF UNCRPD requires that States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. This right to health again comes under Article 21 of Indian Constitution.

### **( 6 ) Conclusion**

Women with disabilities are amongst the most marginalized and disadvantaged people in the world. The intersection of gender inequality and disability presents a situation of multiple levels of discrimination. They are less likely to be educated, employed and well-housed than almost any other population group. They have not only been invisible in international development frameworks but also in international human rights treaties. Until the adoption of UNCRPD, there was no legally binding international law that explicitly named women and girls with disabilities as requiring protection which has also been ratified by India. A gendered reading of disability law reveals that there is a need to incorporate gender concerns in India. There is a need to adopt such strategies to ensure that women with disabilities are not neglected from policies and programmes.