

Disability and Domestic Violence: A Woman's Perspective

Shampa Sengupta

Abstract

Domestic violence is a common occurrence in the lives of persons with disabilities but justice remains elusive for most survivors. Indian laws that deal with domestic violence do not take into account the specific needs of women with disabilities. At the same time, the Rights of Persons with Disabilities Act, 2016 does not address domestic violence specifically either. However, many women with disabilities have shown courage and lodged cases; talked about the violence they have faced within their families. This paper focuses on the domestic violence faced by women with disabilities in both their natal and matrimonial homes. The author uses firsthand experience of dealing with cases of domestic violence and cases in which domestic violence lead to disabilities to argue that access to justice for women with disabilities is riddled with multiple barriers. Using case studies from West Bengal the author reflects on the urgent need for feminist and disability activists to work collaboratively and hold the criminal justice system to account for the rights of women with disabilities who face domestic violence.

Keywords: Domestic violence, West Bengal, Women with disabilities

Author Profile

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Domestic violence affects a large number of women in India. When violence takes place within the home, it is very difficult for a woman with a disability to fight back: first, because she is dependent on her caregivers, and second, because accessing justice is almost impossible. There are many barriers and people expected to support are neither sympathetic nor knowledgeable enough to help. Women with disabilities continue to be considered as burdens on their families and numerically insignificant by the criminal justice system. Sometimes, women with disabilities internalize this oppression. In India, many women think that it is normal for their husbands to beat them, as the husband is the breadwinner. In the case of a woman with disabilities, this feeling goes much deeper: she not only feels dependent on the family as a woman, but there is a feeling of helplessness if she needs assistance in accomplishing daily tasks like walking, going out to market, or working in the kitchen. This leads to a sense of enslavement. It takes time to understand that the violence she is facing is unjustified and to combat it becomes extremely difficult. Unfortunately, neither the police system nor the judiciary is helpful as these systems are steeped in patriarchy and ableism.

The definition of domestic violence in Indian law is very broad and it can be applied to situations involving people with disabilities irrespective of their gender. The Protection of Women from Domestic Violence Act (DVAct), 2005 states that,

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. (*The Protection of Women from Domestic Violence Act, 2005*)

The verbal abuse and economic abuse as defined here constitute the everyday experiences of many people with disabilities. Lack of access to educational facilities and the job market makes people with disabilities dependent on their families. As a result, they are unable to report abuse that takes place within the home, skewing estimates of rates of abuse downward. As an activist involved in several discussions when the Domestic Violence Act was being framed, I recall that there were suggestions of including both men and women with intellectual disabilities within the purview of this law; however, feminist groups vehemently opposed it as this legislation was conceived to address issues faced by women (Kothari, 2016).

Interestingly, when a domestic violence law was passed in Pakistan in 2012, it included the concerns of people with disabilities. Advocate Indira Jaising writes:

Like our Act, it can be activated only by woman and children but unlike our Act it can also be activated by “vulnerable persons” [3] of either gender that is vulnerable due to old age, mental or physical disability or for any other reason. This is a welcome recognition of the need to protect the disabled and provide remedies for the violence which they face. (Jaising, 2012).

A decade after passing the Domestic Violence Act, the Rights of Persons with Disabilities Act of 2016 was passed in India which mentioned the abuse and violence faced by disabled people in general. It also included several clauses specific to the needs of women with disabilities. However, it is important to understand that our Domestic Violence Act does not specifically address the needs of women with disabilities (*The Protection of Women from Domestic Violence Act*, 2005). It is assumed that since the Domestic Violence Act is for all women, any woman with disabilities can use this legislation. However, without an explicit provision for the needs of women with disabilities the likelihood of this group's exclusion from the criminal justice process is high. An example of how this exclusion pans out for women is that while the training of Protection Officers under the Domestic Violence Act includes their sensitization on the special needs of disabled women, in the absence of physical accessibility of Offices of Protection Officers, women with disabilities are unable to lodge complaints. Such examples of gap between policy and practice abound. To illustrate the experience of exclusion of women with disabilities from right to justice, details of five cases are provided here.

Case Study I

Sunita was born with hearing and speech disabilities to middle-class parents (a doctor father and homemaker mother) in Kolkata. As the youngest among three children, she was loved and well cared for at her parental home. She was admitted to a local school that catered to the educational needs of “deaf and dumb” children up to grade VIII. She was a good student and studied upto Class VIII, after which she was compelled to discontinue her education. Sunita also picked up several skills and particularly excelled at sewing. She learnt classical dance, performed several times and became self-confident and self-reliant.

When she was 22 years old, one of her former schoolteachers approached her father. She was looking for a matrimonial alliance for her son — a graduate working in the state government as a clerk—who had recently lost his hearing ability. Sunita's family did not hesitate, considering this proposal as a gift from God. They felt that when parents of “normal” girls struggle to find a proper match for their daughters, to receive an offer at home was an unexpected blessing. Sunita's wedding took place with due pomp and ceremony, typical of a middle-class Bengali family.

Although illegal, dowry demands are still very common in India. When a disabled daughter is married off, it is expected that the family will offer a larger dowry to compensate for her disability. Thus, even though she had not demanded it directly, Sunita's mother-in-law expected that her son's marriage would fetch a large dowry. However, her expectations were not met and soon after the wedding, she started being violent towards Sunita.

Physical violence became a daily occurrence in Sunita's life. She did not immediately understand what was happening to her. She thought that this period of violence would pass, but soon her husband started beating her as well. It was then that she realized that something was seriously wrong in her marriage. Although her ornaments were taken away from her along with her wardrobe, Sunita did not feel the need to inform her parents. It was only when her mother-in-law tried to push her towards the gas stove while she was cooking, that Sunita got scared. She wrote to her parents.

Six months after the wedding, Sunita's parents took her back home. They had meetings with her husband's family to see how this problem could be resolved. Meanwhile, Sunita and her parents realized that she was pregnant and informed her in-laws. Reluctantly, they took her back.

Sunita's pregnancy did not change her situation, the violence continued. One day her husband tried to throw her down the staircase. Sunita suffered severe injuries and returned to her maternal home. She delivered a baby boy prematurely who was born with visual impairment. The doctors attributed this to a brain injury sustained during pregnancy. Although, Sunita's husband was duly informed, he did not come to see his child or take care of him.

Sunita's life became miserable. She was stuck within the home and completely lost all her confidence. Her dance recital days were over, and though she still did some sewing, she never tried to go back to the active life she led before her marriage. Her world revolved around her son. Though her sister tried to counsel Sunita to polish up her skills in order to earn some money for herself, she was unable to do so. So she, along with her son, became a burden. Her family was very protective and supportive, but felt that Sunita should be self-sufficient.

The hardest blow came in the form of a legal summons 7 years later. Her husband filed a case in the family court claiming that his wife had deserted him and that the custody of his son be granted to him. There was no record of the violence he had inflicted on Sunita because the family had not lodged any police complaint.

Sunita's struggle in legal matters was not different from other "nondisabled" women who fight the battle against more powerful opposition in many ways. But her situation was complicated by her disability. In the family courts, there is a standard practice of assigning a counselor instead of a lawyer. The complainant is expected to plead his/her own case. The counselor who was selected for Sunita had no experience of working with a deaf person before and had no knowledge of sign language. She also did not have the inclination to understand Sunita's perspective as a disabled woman. Sunita's husband was also hearing impaired but being an educated and working man, he had confidence and could plead his own case with help from one of his uncles.

Sunita went through a lot of trauma as she realized that her son, could be taken away from her through a court verdict, which made her very depressed. The judge in the family court saw her in this situation and felt that she was not "fit" to look after the child. The court verdict said that the father was more capable because he was educated and drawing a regular salary.

Sunita's family took the help of a renowned women's organization to challenge the verdict. Although Sunita and her family remained grateful for the help of this women's group, they felt that none of the women's group members knew how to deal with the concerns of women with disabilities. Also, they did not know sign language and so made no attempt to communicate with Sunita, and instead preferred to speak with her family members.

Case Study II

Vimla was born in a very well-to-do business family that was also involved in girls' education in Kolkata. However, at the time of her birth her family had hoped that the child would be a son who would grow up to inherit the family's multi-crore business. Thus when Vimla was born, a girl with Down syndrome, the family rejected her. Vimla's mother faced a great deal of violence and mistreatment.

Unable to bear the torture, Vimla's mother filed a case against her husband and in-laws with the police. It was difficult for her to get justice because of her in-laws' wealth and influence. Finally, she took the help of the National Commission for Women as well as the State Commission for Women. After fact-finding teams visited the family, they were compelled to pay Vimla's mother Rs. 1.6 Crore in order for her to vacate their house and withdraw the police case. The agreement was signed in the presence of representatives of both the National Commission for Women and the State Commission for Women.

What was surprising is a line in the agreement that said that the younger daughter Vimla shall stay with her mother. The elder daughter Vasudha will stay with her father and her maintenance, education, marriage and final settlement in life will be fully taken care of by her father. The details of who would take care of Vimla's education, medical care, or daily expenses were not made clear at all. The document makes it very clear that the family did not want to be responsible for Vimla, because of her disability.

Vimla's mother had to move to her maternal home. Although Vimla's mother received the amount of money that had been agreed upon, Vimla did not receive anything from her father's family. Vimla and her mother are two separate human beings, and it is difficult to understand how her extremely rich businessman father could wash his hands off his responsibilities towards Vimla's expenses.

Also questions arise about Vimla's paternal inheritance? Is her sister the only heir of their father's property? Can her father write her off from Family Trust Property because she is mentally disabled? Does he not have any responsibility towards making arrangements for her day-to-day living, education, medical, and future rehabilitation.

Under normal circumstances, the partition and inheritance of the property can only be demanded after the father dies. Senior lawyers were of the opinion that on account of it being an extraordinary situation, a partition suit could be filed by Vimla's mother on her behalf (since Vimla's mother is her guardian as per the law). However, since her mother had already received settlement money, they were advised against this course of action.

Vimla's mother contacted women's groups and legal experts who work on disability and women's rights; however, no one was interested in taking up this case. The women's group said that they were not knowledgeable about disability laws, and it was not possible to take up the case of a mentally disabled girl's property rights. The disability groups were also not keen to take up this kind of case. One prominent disability group told Vimla's mother that this was a family matter and they could have taken up her case if the discrimination was from an outside agency.

Her mother finally lodged a case under the *Protection of Women from Domestic Violence Act, 2005*. The information did not surprise us that neither the Protection Officer appointed under this act nor the court where the case is being heard had information on disability laws and seemed uncertain about how to deal with this case.

Case Study III

Alo was born in a family with very limited income. Her father was a rickshaw puller and her mother worked as a housemaid. She was afflicted with polio when she was five, and had since walked with a limp. Although her siblings received a primary education from nearby schools, her family never felt the need to educate Alo. She helped her mother with household chores and sometimes also assisted her at her employers' homes.

Alo's family tried to get Alo married but her limp was a deal breaker every time. After around a dozen rejections, her family decided to present a girl without a limp to a prospective groom's family. The prospective groom's family approved of the match. The groom's family did not suspect anything because a Bengali Hindu wedding requires the bride to be seated for much of the ceremony, as a result Alo's 'abnormal' walk remained undetected. However, the day after the wedding, the groom realized that his new wife walked with a limp and that he had been tricked. He felt that he could not accept Alo and sent her back to her family saying he would accept her only if she is cured of her limp.

This was a severe shock to her brothers who wanted to rid themselves of Alo at any cost. Alo, on the other hand, was desperate to go back to her husband. She did not feel humiliated that she had been thrown out of her matrimonial home. Instead, she felt that her husband was a very good man who was angry because her brothers had duped him. Alo was even willing to try cures for her limp so that she could go back to her husband.

Since the family did not have the means for medical treatment, they started visiting several religious healers who prescribed elaborate cures and pujas. The family spent a large amount of money in vain. Alo's family was dismayed that they had spent so much money and yet had not been able to cure her limp.

Meanwhile, Alo's brothers tried to lodge a complaint against her husband with the police. However, instead of taking down an First Information Report (FIR), the police officer said that he would mediate and try to solve the problem. At first, the police officer tried to impress upon Alo's husband that she was his responsibility. However, on learning how he had been duped by Alo's family, the police officer supported Alo's husband's decision to abandon her.

The police also said that a husband was free to abandon a disabled wife because a man deserves a “normal” wife who can cook for him and please him with her beauty. No one asked Alo what she wanted, whether her brothers and husband were cruel to her, and what were her needs.

Alo continues to live with her family and has started working as a full-time housemaid. Her earnings remain low because of her disability. She has started bringing her hard-earned money to the family but she is still treated as a burden. Her brother's young children mock her and call her names.

Case Study IV

Lolita was a bright girl while at school. During college, she started losing her vision and by the time she completed her Master's degree she was 98 percent blind. However, one of her childhood friends continued to support her during the traumatic experience of becoming “blind”. Later he proposed marriage to her. Lolita's family was reluctant to accept this relationship, and they thought that it is better for Lolita not to marry. Since the young couple was eager, they convinced the family and finally the marriage took place.

Lolita soon found that her husband had been unfaithful to her. When she confronted her husband, he said that since she could not “see,” she could not blame him. Things became intolerable when her husband started bringing other women to their house. Lolita realized that since she was blind, she could not see her husband and other women engaging in physical intimacies while she was in the room but she could sense it.

She confided in her parents. Her mother said that she had to suffer, since she herself chose to marry a sighted man, despite being blind herself. The natal family was not ready to support her if she wanted to file a case of torture or for a divorce. Aided by her friends, Lolita visited a women's group. The legal advisor told her that it would be difficult to take up her case as there was no proof—no visible injury on her body—of her husband's torture. The lawyer agreed that Lolita had faced emotional violence but was not sure that a blind person's testimony about her husband having an extramarital physical relationship within their home would be accepted by the court.

Lolita was keen to leave her house and start a new life. The shelter homes meant for women who face violence were not ready to accept her; they said she could go and stay in hostels meant for blind women. Since she was neither a student nor a working-woman, the doors of those hostels also shut on her.

Case Study V

Deepa was a senior journalist married to a senior scientist with the central government who came from a very well-established family. They had had an arranged marriage. They had two children. When the children started growing up, Deepa's husband felt that she should quit her job—which required her to work until late and attend parties—and concentrate on taking care

of the family because he believed that teenage children require their mother's attention. He expected his children to do well at science and achieve brilliant results in their examinations. However, Deepa did not want to leave her job.

Due to the differences, Deepa's husband started putting enormous pressure on her. The emotional abuse gradually became very severe and started affecting Deepa's mental health. She was trying to juggle the high demands of her job and her responsibilities to the family. Although her children were understanding, her husband and father-in-law's pressures became difficult to endure. She started taking medicines for depression and tried to commit suicide on two occasions. Her husband filed a divorce case against her and used all her medical documents in court to claim that she was mentally unstable and thus unable to take care of family duties. In his divorce petition, he said Deepa's mental health problems were taking a toll on their children.

The district court decided against Deepa. She was asked to leave her matrimonial home, and was allowed to visit her children only once a month.

Deepa's case is unique because she was not disabled before her marriage. Instead, it was the abuse she faced in the marriage that made her mentally ill. Yet, her husband used her mental illness against her to oust her from their marital home.

The legal system is also biased against women who work in gender atypical professions. Here, both her career choice and mental health problems were cited in the divorce judgment and it was mentioned that Deepa is unable to take care of the children and fulfill family duties.

Plugging the Policy-Practice Gap

From all the five case studies, it is apparent that the effects of domestic violence on women whether they are disabled or nondisabled remain similar. This form of violence makes them dependent on others, mentally devastated, and makes them feel like a burden on their family and society. Additionally, their dependence on their family makes it difficult for them to access justice. The cases also demonstrate that violence and abuse are not class specific and that women with disabilities across different social classes endure such abuse.

When women without disabilities attempt to access justice in the wake of violence, they more often than not have support systems. However, women with disabilities who attempt to access justice after facing domestic violence, find the support systems either inaccessible or inadequate in meeting their needs.

In Sunita's case, it was not her fault that she could not finish her studies or earn a living. The government-run special school for the deaf did not have classes after class VIII, which is why Sunita could not study further. As a student who had studied in a special school for so long, she would have found it very difficult to cope with mainstream education. During her fight for the custody of her son, Sunita's limited education and inability to earn became major obstacles.

In all the five cases, it can be seen that the judiciary, the police, lawyers, and counselors have very limited knowledge of disability issues. It is not as though people and agencies did not want to help. Women's groups and disability groups were sometimes sympathetic (as in Lolita's and Vimla's Case) but they were not sure of the steps they had to take to meet the needs of the woman. When they themselves had little knowledge, they were nervous to take up cases which might need some specialized information. Instead of trying to gain more knowledge, they 'sighted out' the women by asking them to go elsewhere for their specific needs.

One of the reasons behind this according to one activist who works at a shelter home meant for victims of domestic violence is that "there are few cases like this. If there were regular cases of this nature, I would try to learn sign language or we would try to make our building accessible. If there is one woman out of 50 coming here and has a problem, we cannot make specialized provisions for her." (Personal Communication, n.d.)

There is also a glaring lack of data. When we tried to gather data on the extent of domestic violence faced by women with disabilities, we drew a blank. Few studies have been conducted by NGOs but no data is available from the government. The West Bengal Commission for Women keeps disaggregated data on violence faced by SC/ST women and Muslim women but they do not have data on violence faced by women with disabilities. There is a common perception that these cases are rare – one or two cases come to the Women's Commission every year. The Disability Commissioner's office made it very clear that such complaints were not within their purview; evidently, women with disabilities do not even register complaints. Interviews with senior officials at Public Prosecutor's office reflect the same. Employees at the office know of cases filed by women with disabilities but there is no provision to keep track of the numbers.

Unfortunately, women's groups also failed to collate any data. Organizations that work on domestic violence said that they enter a lot of information in their Intake Forms when a woman approaches them for the first time, but disability information is not included. Thus even if women's groups provide legal assistance to women with disabilities, no records are available on how many such women seek help. Further, since the disability movement traditionally fought against removing people with disabilities from their biological families and forcibly moving them into institutions, domestic violence against people with disabilities was dismissed or ignored.

It is acknowledged by disability activists that the Rights of People with Disabilities (RPD) Act 2016 has marked a paradigm shift. Even though mere changes in the law do not translate to changes in the lived realities of people with disabilities, since the RPD Act categorically mentions the issue of women with disabilities in many of its clauses, there is hope for some change and access to justice is likely to get easier. Here, one of the sections on the Access to Justice in the Chapter II - Rights and Entitlements of the Rights of Persons with Disability Act is particularly significant:

12. (1) The appropriate Government shall ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination

on the basis of disability.

(2) The appropriate Government shall take steps to put in place suitable support measures for persons with disabilities specially those living outside family and those disabled requiring high support for exercising legal rights. (*The Rights of Persons with Disability Act*, 2016. p. 6).

It is easy to understand why the line “persons with disabilities specially those living outside family and those disabled requiring high support for exercising legal rights.” is included: it is included because of the horrific stories of disabled people living in institutional setups. Perhaps, not mentioning violence against people with disabilities from within the family is strategic. It suggests that the disability movement's preoccupation with the “Right to Marriage” and the “Right to Family Life” has overshadowed the fact that a person's own family could be violent towards them.

Many questions still remain unanswered when we read both DV Act 2005 and RPD Act 2016 together. Although India has international obligations and its laws invoke CEDAW and UNCRPD, it is important to understand that it is the people's movement that forced the government to enact these laws. Additionally, civil society members had been actively involved in the drafting of both these laws, yet several gaps remain. While violence within the family remains the domain of women's groups, and issues such as barrier-free courts or police systems remains the domain of disability groups, women with disabilities continue to fall through the cracks.

Should the government chose to play a more pro-active role a significant difference could be made. Though the issue of women with a disability was included in RPD Act, while framing the rules, neither the central nor any of the state governments made an attempt to include rules mentioning women with disabilities. (RPD Act 2016, Chapters II, V, VI) There has been no decision on whether these issues will be under the purview of the Women and Child Ministries or the Social Justice Ministry? Why has there been no attempt to establish clarity on this three years after the enactment of the RPD Act?

Even after the RPD Act became effective, there have been cases in which women with disabilities are not able to access justice easily. For instance, a woman who is an amputee filed a case against her husband for beating her. She wrote to the Central and state Commissioners of Disabilities but was told to write to the Women's Commission as hers was a case of domestic violence. The authorities were unable to understand her perspective according to which the domestic violence she faced was a result of her disability. Because she takes her prosthetic legs off at home, she is rendered helpless in the face of her husband's violence. She alleged that he took her phone away and threatened to push her off the fifth floor balcony. The FIR she filed against her husband made no mention of her disability, since the police did not realize that she had a disability. Her lawyers claimed that it would have been easier to file a petition against the bail granted to her husband if her disability had been recorded. Clearly, the police, the legal system, and even the Disability Commissioner lack required sensitivity training and are unable to see the complexities of domestic violence against women with disabilities.

After the Criminal Law (Amendment) Act of 2013 and RPD Act of 2016, it is not appropriate to say that there are no laws that specifically address violence against women with disabilities. However, there is a large gap between the law and practices on the ground. One can safely say that the more recent RPD Act and the Mental Health Care Act 2017 address gender issues, however, only proper implementation can bring about qualitative change in the lives of women with disabilities. Synergy between disability groups and feminist groups will be very important. Different departments of Government of India need to be held accountable in order to ensure a violence-free world for women with disabilities. Disability groups and feminist groups must ensure that this work is not delayed any further.

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