

TREATMENT OF PERSONS WITH DISABILITIES UNDER THE INDIAN CRIMINAL JUSTICE SYSTEM

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Abstract

Persons with disabilities are guaranteed not only the right to dignity but also the means to exercise it. Under the criminal justice system, a person with disabilities can be a victim, witness, and in some cases a prisoner too. They are given special care under various procedural laws in India as the country is bound by its international obligations in providing them access to justice. The judicial pronouncements depict that the treatment of persons with disabilities cannot be uniform and it will depend upon the facts and circumstances of each case. The inherent basic rights of persons with disabilities are reaffirmed and codified by way of legislation to punish the exploiters and prevent discriminatory treatment. The Indian laws though strive to protect the rights of persons with disabilities; the proper implementation of those laws is still a question that keeps popping up again and again in one form or the other. While the rights of witnesses and victims with disabilities are protected to some extent, the prisoners with disabilities are forgotten by the executive. The jail audits show that the conditions of Indian jails are scary and unfavorable to prisoners with disabilities. This paper will analyze the rights of persons with disabilities as witnesses, victims, or prisoners under the Indian criminal justice system and also the means of exercising those rights.

Keywords: Disabilities, unsound, dignity, discrimination, criminal law, and social justice.

Introduction

The Indian society is a society where the majority of its members are minorities in one aspect or the other. The most vulnerable minority are the persons with disabilities. Every society has to facilitate the empowerment and inclusion of persons with disabilities in all its endeavours. This empowerment and inclusion can be achieved by way of substantial and procedural laws that bind all the members of the society. It is not only the duty of the Indian judiciary but also the task of the executive and legislature to make sure persons with disabilities are not deprived of their basic rights. Their dignity should be protected at all costs and they should get equal opportunities to lead a productive life. The welfare state has to ensure any discrimination, inhumane treatment, torture, or injustice committed against persons with disabilities are detected early, prevented, or

rightly intervened. Both protection and affirmative actions are necessary. The first and foremost problem is the stigmatization in the terminology used to address persons with disabilities. While the terms like blind, mute, handicapped, deaf, dumb, wheelchair-bound, mad, mental, crippled, psycho, abnormal, crazy, nuts, insane are considered inappropriate by many, the Indian laws have stick to the terms “persons with disabilities” and “disabled persons” to address them. There is no specific law that punishes a person who inappropriately calls a person with disabilities though it is a direct attack on their dignity. The next problem lies in accommodation and accessibility. This is where the Non-Governmental Organizations (in short NGO) come in. They work tirelessly for the empowerment of persons with disabilities by making sure they get reasonable accommodation and also access to justice. Justice includes social justice too. While persons with disabilities play a variety of roles in society, their roles as victims, witnesses, and prisoner are the most relevant for social justice. Special procedures are needed with empathetic considerations for treating victims, witnesses, and prisoners with disabilities to make sure their rights are exercised in a hassle-free manner. Remedy against the improper implementation of laws relating to persons with disabilities is crucial. In this state of affairs, promising a right without such remedy will be fraud on the Indian Constitution and also India’s international obligations. Fairness and equity to all the members of society are pillars of social justice. India will fail to achieve social justice if it fails to provide appropriate procedures for treatment in respect of victims, witnesses, and prisoners with disabilities. Therefore, it is essential to analyse the existing procedures adopted in dealing with victims, witnesses, and prisoners with disabilities in India. This paper attempts to analyse the existing legal framework concerning persons with disabilities and the scope of this paper is limited to the treatment of victims, witnesses, and prisoners of criminal cases in India.

Victims with disabilities

The reason for exploitation or discrimination that a person with disabilities faces is most of the time related to their disability itself. This inhumane form of exploitation or discrimination will directly affect the social integration and rehabilitation of victims with disabilities. Numerous laws are dealing with the rights of victims of disabilities directly or indirectly. The biggest reform in-laws specifically relating to persons with disabilities in India is the Rights of Persons with Disabilities Act, 2016. According to the Rights of Persons with Disabilities Act, 2016, persons with disabilities are persons with long-term physical, mental, intellectual, or sensory impairment which hinders their interaction or effective participation equally with other members of the society.¹ There are six categories of specified disabilities listed and explained under the Rights of Persons

¹ The Rights of persons with disabilities Act, 2016, §2 (s), No.49, Acts of Parliament, 2016 (India)

with Disabilities Act, 2016 such as physical, intellectual, mental behavior, disability caused due to chronic neurological conditions or blood disorders, multiple disabilities, and the disabilities notified by the Central Government.² All the persons covered under these definitions can be called persons with disabilities in general. Access to justice is the most basic thing that cannot be denied to such persons. The United Nations Convention on Rights of Persons with Disabilities (hereinafter referred to as UN CRPD) demands the State Parties ensure effective access to justice for persons with disabilities on an equal basis with others. Access to justice includes procedural and age-appropriate accommodations. Access to justice for persons with disabilities is important to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings. The people working in the field of administration of justice including police and prison staff need to be trained in this aspect.³ India being a party to UN CRPD cannot ignore its obligation of providing access to justice to persons with disabilities. Indian laws provide that persons with disabilities have the right to access justice and this right can be exercised only when suitable support measures are available for persons with disabilities living without or far from their family and also disabled persons requiring high support for exercising their legal rights. Reasonable accommodation for such persons also needs to be ensured by the National Legal Services Authority and the State Legal Services Authorities. The Central and State Government(s) must make sure the public documents are in a format that is accessible by persons with disabilities. The appropriate Governments also have to provide facilities and equipment to record testimonies, arguments, or opinions of persons with disabilities in their preferred language and means of communication.⁴ This is to assist disabled persons who communicate using sign language or gestures.

Indian laws require Special Courts to be set up by the State Governments to deal with the offenses under the Rights of Persons with Disabilities Act, 2016.⁵ If persons with disabilities are subjected to abuse, violence, or exploitation, then the Government shall step to rescue, protect and rehabilitate victims of such incidents. The information can be given directly to the Executive Magistrate who has jurisdiction. The Executive Magistrate may forward it to Judicial Magistrate or Metropolitan Magistrate if the offense is punishable under the Indian Penal Code or any other law for which the Executive Magistrate does not have jurisdiction. In other cases, the Executive Magistrate has the power to pass orders for rescue, rehabilitation, or protective custody. If the complaint is received by the police, then the police officer is bound to inform the victim about the right to approach the Executive Magistrate, right to free legal aid, right to file a complaint under the Rights of Persons

² *Id.* at § 2(zc)

³ Convention on the Rights of Persons with Disabilities, Dec 13 2006, UN GA, A/RES/61/106, art. 13

⁴ *supra* note 1 at § 12

⁵ *supra* note 1 at § 84

with Disabilities Act, 2016, and also the particulars of the nearest organization rehabilitating persons with disabilities.⁶ The offender found guilty of an offence against a person with disabilities under the Rights of Persons with Disabilities Act, 2016 shall be punished only under such Act which provides for punishment that is greater in degree.⁷ Relief to the disabled is within the subject matter of the State List of the Constitution in which the State Legislatures can make laws. Lunacy and mental deficiency are under the Concurrent List.⁸ The right to free legal aid provided under the Union law i.e. the Rights of Persons with Disabilities Act, 2016, and under other national as well as state legislation is the result of directive principles of state policy under the Constitution. Under Article 39-A of the Constitution of India, the State has to make sure opportunities for securing justice by way of free legal aid are not denied to citizens with disabilities. Mentally ill and/or disabled persons are eligible for free legal services in India.⁹ Therefore, these laws will make sure no person with disabilities is denied access to justice because of their economic condition or physical condition. In the case of *Karamjeet Singh vs Union Of India*,¹⁰ the Hon'ble Supreme Court of India held that persons like a guardian or next friend can seek redress under Article 32 of the Indian Constitution by questioning the legality, validity, or correctness of the order on behalf of the aggrieved party who is a minor or unsound person or a person having any other disability recognised under the law.

The most vulnerable people among the victims with disabilities are the victims with intellectual disabilities. Various safeguards are provided for them against exploitation. The acts of a person, who at the time of committing the act is incapable of knowing the nature of the act or its wrongness or its illegality, are not an offence if it is done because of unsoundness of mind.¹¹ Whoever breaches the contract to attend on and supply the wants of a helpless person including the person with unsound mind, shall be punished with imprisonment up to three months maximum or fine up to two hundred rupees or both.¹² Persons with unsound minds may also be having incurable diseases and conditions. They might even be an incompetent person in a vegetative state. The definition of an incompetent person includes a person of unsound mind also.¹³ In the case of *Aruna Ramchandra Shanbaug vs Union Of India & Ors.*,¹⁴ the Hon'ble Supreme Court held that if the incompetent person is unable to decide whether to withdraw his life support or not, it is the High Court alone under Article

⁶ *supra* note 1 at § 7

⁷ *supra* note 1 at § 95

⁸ INDIA CONST. VII Schedule

⁹ The Legal Services Authority Act, 1987, § 12, No.39, Acts of Parliament, 1987 (India)

¹⁰ AIR 1993 SC 284

¹¹ The Indian Penal Code, 1860, § 84, No.45, Acts of Parliament, 1860 (India)

¹² *Id.* at § 491

¹³ Passive Euthanasia- A Relook, Report No. 241, Law Commission of India, Aug 2012

¹⁴ AIR 2011 SC 1290

226, as *parens patriae*, which ultimately must approve the passive euthanasia after giving due weight to the views of the near relatives, next friend, and doctors. This is to prevent the unscrupulous persons, willing to inherit property, from eliminating the incompetent person using crooked methods in this unethical society with corruption and commercialization.

In this male chauvinistic society, women are not treated right. If the woman is a person with intellectual disabilities, the situation is even worse. To protect them from sexual offences, the law provides that a man is said to commit rape where the consent is given by a woman, because of unsoundness of mind, who is unable to understand the nature and consequences of that to which she gives consent.¹⁵ The life imprisonment given to an offender who rapes a woman having mental or physical disability shall be imprisonment for the remainder of that offender's natural life.¹⁶ In the case of *Chaman Lal vs The State Of Himachal Pradesh*,¹⁷ the Hon'ble Supreme Court of India upheld the conviction of the accused who raped a victim with an IQ level of sixty-two falling within the category of mild mental retardation. The victim was not in a position to understand the good and bad aspects of sexual assault. The accused has taken undue advantage of the mental sickness/illness and low IQ of the victim. The Hon'ble Court rejected the contention that the ability to do household chores discards the medical evidence of the victim's mental illness. The Hon'ble Court went on to say that persons with mental disorders/ sickness deserve special care, love, and affection. They should not be exploited.

Adequate compensation needs to be given to victims with disabilities. The Indian laws have special provisions by which the fine amount paid by the accused to the court is given to the victims. Acid attack victims suffer from permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt in their body because of the acid thrown upon or administered to them. The fine paid by the offenders in acid attack cases is paid to acid attack victims itself and the quantum of the fine amount should be just and reasonable to meet the medical expenses of the treatment of the victims.¹⁸ Sometimes the persons with disabilities will not even be in a position to keep or maintain the compensation amount safely. In the case of *Tekan Alias Tekram v. State Of M.P (Now Chhattisgarh)*,¹⁹ the rape victim had visual impairment. She was illiterate and was living alone. She had no one to take care of her either emotionally or economically. Therefore, the Hon'ble Supreme Court directed the State of Chhattisgarh to pay Rs.8,000/- per month till her

¹⁵ *supra* note 11, at § 375

¹⁶ *supra* note 11, at § 376(2)

¹⁷ AIR 2021 SC 46

¹⁸ *supra* note 11 at § 326A

¹⁹ AIR 2016 SC 817

lifetime as victim compensation to the person with visual impairment. The Hon'ble Court did not order any lump sum amount as compensation for rehabilitation because she was not in a position to keep and manage the lump sum amount.

Witnesses with disabilities

As per the Indian Evidence Act, 1872, a witness unable to speak may give evidence in any other intelligible manner such as writing or signs. Such writing or signs must be written or made in open Court and the evidence so given shall be deemed to be oral evidence. The assistance of an interpreter or a special educator in recording the statement can be availed, and such statement shall be video graphed too.²⁰ The police officer has to record the information in cognizable cases, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator where the person reporting the offence is a person with disabilities.²¹ The mentally or physically disabled person cannot be asked by the police officer to attend any place during the investigation except the place where the disabled person resides.²² In criminal proceedings, while the recording of statements of persons, who have physical or intellectual disability either temporarily or permanently, the Metropolitan or Judicial Magistrate has to take the assistance of an interpreter or a special educator and it shall be video graphed. It will be considered as a statement in lieu of examination-in-chief and the maker of the statement can be cross-examined on such statement, without recording the same at the time of trial.²³ In the identification of an arrested person, if the person identifying them is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall ensure methods comfortable to the person identifying are used. The identification process should be video graphed too.²⁴ In the case of *State of Rajasthan v. Darshan Singh*,²⁵ the Hon'ble Supreme Court of India reaffirmed that a witness who has hearing and speech impairment is also competent. If such a witness can read and write, it is desirable to record his/her/their statements in writing. If such a witness cannot read and write then sign language with the aid of an interpreter can be preferred. The interpreter should not have any interest in the case and should not have been examined without administering an oath. However, the Hon'ble Court refused to interfere in the High Court's acquittal

²⁰ The Indian Evidence Act, 1872, § 119, No.1, Acts of Parliament, 1872 (India)

²¹ The Code of Criminal Procedure, 1973, § 154, No. 2, Acts of Parliament, 1974 (India)

²² *Id.* at §160

²³ *supra* note 21, at § 164

²⁴ *supra* note 21, at § 54A

²⁵ AIR 2012 SC 1973

order in this case because the sole eye witness's statements had been recorded with the help of her father as an interpreter, who was an interested witness and was examined without administering an oath.

A dying declaration given by a person with a speech impairment is not directly stated to be admissible. It can however be admissible in the light of judicial pronouncements. In the case of *Meesala Ramakrishan v. State of A.P.*,²⁶ the Hon'ble Supreme Court held that dying declaration recorded based on nods and gestures is not only admissible but possesses evidentiary value. The extent of its evidentiary value will depend upon the person who recorded the statement, his educational attainment, the gestures and nods that were made by the dying person, the questions asked, whether the questions were simple or complicated and how effective or understandable the nods and gestures were. The dying declaration of wife given in nods and gestures was relied upon to convict her husband for her murder. The wife was not in a position to speak at the time of the dying declaration and her nod being from above to downward was understood to be an answer in affirmative to the questions asked.

The judicial pronouncements have also cast additional duties upon the Court of law apart from existing duties under the Constitution and other legislation. In the case of *Chander Singh v. State*,²⁷ the Hon'ble Delhi High Court highlighted the duty of Courts when a witness with hearing and speech impairment is under cross-examination. The Hon'ble Court held that the Court is required to take due care of the fact that the vocabulary of such witnesses is limited as they use sign language to speak. It will be difficult for them to answer or explain everything in detail using sign language. The Court of law has to exercise control over the cross-examination keeping in view the ability of the witness in this type of situation. The competence or credibility of a witness is in no way affected by the disability of a limited vocabulary of sign language. The prosecutrix in this case narrated the whole incident using gestures. The statement of the minor child who was deaf and dumb was recorded with the assistance of a Support Person working at Nursery Primary School for Deaf. The Hon'ble Court also refused to efface the testimony of the witness in the form of a drawing indicating the distance where the incident took place.

Prisoners with disabilities

It is common for society to push for empathetic treatment for victims and witnesses with disabilities. However, the prisoners with disabilities who already have the problematic tag of a prisoner are struggling to get the justice they deserve. The Tihar Jail Access Audit done in 2018 by Nipman Foundation as per the

²⁶ (1994) 4 SCC 182

²⁷ 2016 (2) CRIMES 792 (DEL)

orders of Hon'ble Delhi High Court made shocking revelations about the poor infrastructure facilities in the Jail complex that makes the life of disabled prisoners a nightmare. It was found that there were no proper ramps and levelling at many places including restrooms which restricts access to a disabled person in a wheelchair. There was only one wheelchair available and even that was in a poor condition. The disabled prisoners were not given any tasks to earn money also.²⁸ The directive principles of state policy provide that the State shall secure the right to work in cases of disablement.²⁹ Nipman Foundation has found some problems in Mandoli and Rohini Jails too. Dr. Sandeep Govil, who was the former visiting psychiatrist for Tihar Jail for five years, observed that the suicide rate among mentally ill prisoners is higher than the average. They are abused, beaten, raped, and treated as an entertainment source for other prisoners who make them dance or sing. The mentally ill inmates found it difficult to get good character certificates because they were incapable of understanding the normal behaviour expected in prison.³⁰ The conditions of Indian jails push us to conclude that even a physically and mentally fit person might become disabled physically or mentally if they are not taken care of by the Jail authorities. The jail authorities' lack of empathy towards the disabled inmates ultimately puts the duty on the Court of Law to protect such prisoners' rights. The Non-Governmental Organizations and activists have played a major role in making sure the voices of disabled inmates are heard by the judiciary and the poor condition of disabled inmates in the jails are brought to light. However, many Indian jails have not been audited in this aspect and the probability of inhumane treatment or discrimination is very high for the very same reasons.

Every person with a disability has the right to equality, the right to life with dignity, and also respect for their integrity. The law mandates the Government to ensure appropriate steps are taken in providing a proper environment for such persons. Nobody can be discriminated against on the grounds of disability.³¹ Any distinction, exclusion, or restriction, which impairs or nullifies or attempts to impair or nullify the recognition, enjoyment, or exercise of human rights and fundamental freedoms of a person with a disability, will amount to discrimination. Denying reasonable accommodation to such a person also amounts to discrimination.³² The Government is legally obligated to protect disabled persons from torture, cruelty, inhumane or degrading

²⁸ Nipman Foundation, *Tihar Jail Access Audit*, NIPMAN FOUNDATION, (June 14, 2021, 10:00 AM), <https://static1.squarespace.com/static/59228730197aea2df14c1770/t/5d1d9a3deaad0500016b2e12/1562221178867/TIHAR+JAIL+ACCESS+AUDIT.pdf>

²⁹ INDIAN CONST. art 41.

³⁰ Human Rights Law Network, *Report of the National Training on Prisoners' Rights*, HRLN, (June 11, 2021, 07:00 AM), <https://2019.hrln.org/wp-content/uploads/2019/06/report-of-the-national-training-on-prisoners-rights.pdf>

³¹ *supra* note 1, at § 3

³² *supra* note 1, at § 2 (h)

treatment.³³ It is also an obligation under the international convention to take legislative, administrative, judicial, and other measures to prevent torture, cruelty, inhumane or degrading treatment.³⁴ Indian executive is however failing to comply with its obligations in some cases. Mr. G.N. Saibaba, who is 90% physically disabled is under solitary confinement (namely Anda Cell) in the Nagpur Central Prison. He also tested positive for the Coronavirus.³⁵ In 2015, a disabled person, who was accused in a criminal case, was made to crawl from jail to the courtroom on the fifth floor without a wheelchair.³⁶ Such solitary confinement and inhumane treatment of disabled persons without support would violate India's international obligation to protect and respect the disabled person's right to mental and physical integrity.³⁷ Though the national and international laws uphold the rights of persons with disabilities, the implementation of those laws is not proper.

In the case of *Mrs. Veena Sethi vs State Of Bihar And Ors.*,³⁸ the Hon'ble Supreme Court of India treated a letter addressed to Justice Bhagwati regarding the illegal detention of sixteen prisoners, who were of unsound mind, in the Hazaribagh Central Jail for almost two or three decades. As per Section 428 of the Criminal Procedure Code, 1973, the period during which an accused has been in jail as an under-trial prisoner should be taken into account to compute the period of the sentence. In this situation, even the maximum imprisonment the accused is ordinarily required to undergo for life imprisonment is not more than fourteen years. Therefore, the Hon'ble Court directed the State Government to drop the pending cases against certain prisoners of unsound mind as they have already been in jail for almost twenty-five years. The Hon'ble Court also felt that releasing the prisoners in that mental state would be detrimental as there were no adequate institutions in Bihar for the treatment of unsound persons. The only institution present at that time was Mansik Arogyashala Kanke which was overcrowded. The Hon'ble Court directed the Superintendent of that Jail to make sure that these prisoners are examined by the Psychiatric Specialist every six months and the superintendent was also directed to submit a report of such examination to the District Judge.

³³ *supra* note 1, at § 6(1)

³⁴ *supra* note 3, at art. 15

³⁵ Sonam Saigal, *Coronavirus | Jailed Delhi University ex-professor G.N. Saibaba tests positive for COVID-19*, THE HINDU, (June 13, 2021, 10:30 AM), <https://www.thehindu.com/news/national/other-states/jailed-ex-du-professor-g-n-saibaba-tests-covid-19-positive/article33827962.ece>

³⁶ Sana Shakil, *Disabled accused made to crawl to fifth-floor court*, THE TIMES OF INDIA, (June 13, 2021, 11:30 AM) <https://timesofindia.indiatimes.com/city/delhi/disabled-accused-made-to-crawl-to-fifth-floor-court/articleshow/48367771.cms>

³⁷ *supra* note 3, at art. 17

³⁸ AIR 1983 SC 339

Mentally retarded persons have the right to protection from exploitation, abuse, and degrading treatment and also a right to due process of law.³⁹ The Court shall release on bail the persons incapable of entering defence because of unsoundness of mind or mental retardation even if the case is one in which bail may not be taken. If the Court is of opinion that discharge of the accused cannot be ordered, the Court can order the transfer of the accused to a residential facility for persons of unsound mind or mental retardation where the accused will be provided care, appropriate education, and training. ⁴⁰The trial or inquiry will resume when the accused ceases to be of unsound mind. ⁴¹Persons acquitted on the grounds of unsoundness of mind will be ordered by Court to be detained in safe custody or will be handed over to a friend or relative on giving security concerning the safety of unsound persons as well as others. Such friend or relative should also make sure the unsound person is produced for inspection by State Government officers and also produced before Courts when required.⁴² If the lunatic person detained in safe custody like jail or lunatic asylum becomes mentally fit, the State Government can order for their release. This is however subject to certification of Inspector General or visitors of asylum that such persons are no more a danger to themselves or others.⁴³ If convicted persons of unsound mind are detained in prison, the State Government can also order for their transfer to a lunatic asylum or another place of safe custody during the remainder of their term ordered or sentenced. If on the expiration of that term it is certified by a medical officer that it is necessary for the safety of such prisoners or others that they should be further detained under medical care or treatment, then State Government can make orders to that effect. When such prisoners have become of sound mind, then the State Government shall remand them back to the prison from which they were removed, or to another prison within the State. If such prisoners are no longer liable to be kept in custody, the State Government can order them to be discharged.⁴⁴ The discretion of the State Government should be exercised diligently and the decision should purely be based on medical reasons.

The handbook on prisoners with special needs published by United Nations Office on Drugs and Crime made certain recommendations concerning prisoners with disabilities relating to access to justice, protection against discrimination, health care, prison management, safety, etc. It recommended that prisoners with disabilities should be diverted from the criminal justice system to appropriate treatment programs taking into account the risk posed by the offender. Trained staff should be appointed as a contact point for persons with disabilities

³⁹ Declaration on the Rights of Mentally Retarded Persons, Dec 20, 1971, UN GA Res 2856 (XXVI)

⁴⁰ *supra* note 21, at § 330

⁴¹ *supra* note 21, at § 331

⁴² *supra* note 21, at § 335

⁴³ *supra* note 21, at § 338

⁴⁴ The Prisoners Act, 1900, § 30, No. 3, Acts of Parliament, 1900 (India)

inside the jail. The inmates with disabilities should be allowed to bring their supportive equipment inside the prison. Data relating to prisoners with disabilities should be collected data regularly and assessments should be made to identify their problems. It also recommended that prison sentences should be the last resort for persons with disabilities.⁴⁵

Conclusion

In a society where persons with disabilities are seen as a disability rather than a person who has a disability, the legal protections, and rights guaranteed to victims, witnesses, and prisoners with disabilities have been a crucial step towards achieving social justice. The free legal aid given to victims with disabilities is further strengthened by judicial pronouncements which allow the next friend or guardian to file a writ petition on behalf of the persons with disabilities. Periodic compensation instead of the lump-sum amount is also a progressive idea that the judiciary has taken to ensure complete justice. Special protection is given to victims of sexual offences. As far as witnesses with disabilities are concerned, the treatment of witnesses with disabilities is also special throughout the criminal case procedures like a police investigation, recording of statements, identification of accused, cross-examination, dying declaration, etc. Judiciary has played a major role in shaping the law relating to persons with disabilities in an empathetic manner by way of its judicial pronouncements. The substantive and procedural laws along with judicial pronouncements relating to persons with disabilities have been passed in such a manner that special attention is given to victims and witnesses with intellectual disabilities, especially women.

While the victims and witnesses with disabilities are given the right treatment under the criminal justice system, the proper means of exercising the basic rights for prisoners with disabilities are lacking. As far as the right to dignity and the right against degrading treatment is concerned, the offense for which the person has been convicted is immaterial. India should not ignore its international obligations and compromise on the basic rights guaranteed to prisoners with disabilities. There is an urgent need to check if prisoners with disabilities are getting fair treatment in jails. The following suggestions are made in this regard:

1. A Commission should be appointed by the Government of India under Section 3 of the Commission of Inquiry Act, 1952. The said commission should be mandated to carry out the task of auditing all the prisons in India and check the conditions of persons with disabilities inside those prisons.

⁴⁵ United Nations Office on Drugs and Crime, *Handbook on Prisoners with Special Needs*, UNODC 53 (2009), https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf

2. The 50% of members of the above-said commission should be NGOs or social workers. These members should be selected by the respective High Court of the State where the prison to be audited is located.
3. The audit report of the said commission should be published and public opinion should be collected in the form of written memoranda.
4. The above-said commission should give more weightage to the written memoranda received from persons with disabilities or organizations working for the welfare of the persons with disabilities.
5. The above-said commission should also recommend a legislative draft dealing with the rights of and duties towards prisoners with disabilities. The Parliament may enact a law based on those recommendations. Such law may also provide for yearly audit.

