

Deaf Women in India: A Critical Overview of the Legal Framework through Right Based and Intersectionality Theories

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ARTICLE INFO

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Dates:

Received: 31-05-2026

Accepted: 16-06-2026

Published: 30-06-2026

Keywords:

*Deaf women,
gender, disability,
intersectionality, right
based*

How to Cite:

*Sreedurga T.N. (2025)
Deaf Women in India:
A Critical Overview of
the Legal Framework
through Right Based
and Intersectionality
Theories. DME Journal
of Law, 7(1), 79-79.
doi: 10.53361/dmejl.
v7i01.08*

Abstract

The disability law framework in India is based on the right- based approach to disability which entitles all disabled persons with rights and recognition in par with all other people. However, the global disability laws often did not consider the differences within the disabled community and viewed them as a homogenous group. The intersectionality theory however views the problems of marginalised groups in intersection with the multiple identities they possess. Therefore, the problems of deaf women should be viewed in the intersection of disability, gender and cultural identities. This paper is a study to examine the issues of rights of deaf women in India through an intersectional and right-based approach.

INTRODUCTION

The deaf women in India face multiple discrimination based on gender, disability, culture etc. The rights and beneficial provisions for deaf women in India is predominantly based on the Rights of Persons with Disabilities Act, 2016. The Act was enacted after India committed to specifically adopt the UNCRPD in the domestic legal system. The Act follows a right- based approach to disability and contains provisions for the civil, political, economic and cultural rights of the disabled. However, this paper aims to test the Indian disability law not only through the right- based disability approach but also through the intersectionality approach. The paper assumes that the problems of deaf women is not homogenous to the other disabled persons. They are different and the identity of a deaf women as a disabled person intersects with the gender and cultural identities. Moreover, these complexities may be more severe for deaf women who belongs to rural, Dalit or economically backward communities.

The modern understanding of disability rights has evolved from elimination, apathy, charity, medical care models to a right based model. Therefore, it is argued that the full realisation of the rights of deaf women in India will be possible only if the law and policies in India appreciate the other socio-cultural and other environmental barriers, they have to face.

OBJECTIVES

- To examine the disability laws in the context of deaf women in India through an intersectionality approach.
- To do a critical analysis of the laws for deaf women in India.
- To discuss the problems of deaf women in India in the context of perceptions of the society and its impact on the realisation of deaf women rights.

Hypothesis

The right based approach to disability combined with intersectional approach to disability is required for the effective realisation of rights of deaf women as they face multiple discrimination in society.

Research Questions

- Whether deafness is unique from other forms of disabilities and needs specific measures to address it?
- Whether the Indian legal framework address the multiple discrimination faced by the vulnerable groups such as deaf women in India?
- Whether the realisation of rights of deaf women also require a change in attitudes and perceptions of the society?

RESEARCH METHODOLOGY

The research study is multi-disciplinary in nature. An exploratory and analytic approach will be used. The methodology is doctrinal in nature. The relevant laws, research papers, articles, reports etc. are discussed.

Right Based Approach to Disability

The rights-based approach to disability is a highly progressive understanding of disability which means disabled people just like other non-disabled people have an equal right to all fundamental human rights, freedoms and dignity. The approach is cherished in the global disability rights regime. It is the basis of United Convention on Rights of Persons with Disabilities, 2008. The Act is a

progressive shift from the charity and medical approach to disability. It identifies how the society has created barriers for disabled people through inaccessible physical spaces, attitudes of society or discrimination. Therefore, the approach urges the States, law makers and society to eliminate these barriers and make environments where disabled people can enjoy their fundamental rights.¹ The right-based approach to development played a major role in changing the perception of disabled from a medical model to right-based model. The United Nations brought out “Common Understanding of a Human Rights Based Approach to Development Cooperation” in 2003 and provided that all the international plans and programmes should have human right based approach and that the human rights principles should be a guide to all the developmental programmes. Emphasis was laid on inclusion and participation of vulnerable groups, equality, non-discrimination etc.² The approach is also an integral part of Indian disability law.

Disability and gender: The intersectionality approach

The movement for the rights of disability started in 1970s. The initial period of disability movement was based on essentialist approach to disability which identified disabled as a homogenous group sharing some common identity, features, experiences, needs, rights etc. The study of disability did not take account of their alternate identities

1 United Nations Children’s Fund. (2024, December). *A rights-based approach to disability: Focus brief 3* (UNICEF Disability Inclusion – Frontline Workers Training Package). UNICEF. <https://www.unicef.org/media/171021/file/Focus-brief-A-rights-based-approach-disability.pdf>

2 Secretariat for the Convention on the Rights of Persons with Disabilities of the Department of Economic and Social Affairs, United Nations, United Nations Population Fund, & Wellesley Centers for Women. (n.d.). *Disability rights, gender, and development: A resource tool for action*. United Nations. <https://www.un.org/disabilities/documents/Publication/UNWCW%20MANUAL.pdf>

such as gender, race, culture etc and how their experiences was more severe when they are black, women etc. The categorisation was binary, ie. disabled or not disabled. The study also did not ponder much into the varied needs of different types of disabled groups.

The term 'intersectionality' was first used by Kimberle Crenshaw in 1989 was applied to black feminism. Crenshaw applied the theory of intersectionality in the case of Black Women. She observed that the problems of Black Women are more severe than Black Men due to the intersection between gender and race. Over the years, intersectionality approach expanded to other areas like disability. Kathy Davis explains intersectionality as "*The interaction [among] categories of difference in individual lives, social practices, institutional arrangements, and cultural ideologies and the outcomes of these interactions in terms of power*".³ The intersectionality thus refers to the intricate relationship between different sides of a person's life and their outcomes in the life of that person. Intersectionality theory throws light on interactions between various factors of human life and how these factors can be mutually supportive or affect the inequality of the social groups. The Indian Supreme Court had used the intersectionality theory in the case of a disabled Dalit women.⁴

Intersectionality when applied to disabled persons would imply that disabled persons would not be having a single disabled identity. They might also be belonging to other identities such as race, gender, culture, education, economic status etc. In some identities, they are privileged while somewhere they are oppressed. The intersectional understanding of the disability with gender would explain the oppression of women or other vulnerable genders within the social group of disability. This

understanding is an anti-essentialist approach to disability which is against the categorisation of all disabled persons in one group and thinking that all face same problems and have same needs.⁵

Deafness, DEAF and Deaf Women: An Intersectionality and Right based Approach

Deaf individuals refer to those people with profound hearing loss. They are either completely deaf or might be having slight hearing ability. The common mode of communication is the sign language although some communicate through home signs, unconventional signs, writing and lip reading. Some people are born deaf while others may have acquired it due to disease, old age, accidents etc.

"A person is said to have hearing loss if they are not able to hear as well as someone with normal hearing, meaning hearing thresholds of 20 dB or better in both ears. It can be mild, moderate, moderately severe, severe, or profound, and can affect one or both ears."⁶ In India, deafness is defined as "*persons having 70 DB hearing loss in speech frequencies in both ears*".⁷ Both these are the medical constructions of deafness. However, the right-based understanding of deafness is much wider in nature.

In the right- based approach, deafness as a disability is also socially constructed and not merely a medical condition. The Deaf might have different needs from that of hearing community. Since the society is ableist and audist, it has created

3 Kathy Davis. (2008). Intersectionality as buzzword: A sociology of science perspective on what makes a feminist theory successful. *Feminist Theory*, 9(1), 67–85. <https://doi.org/10.1177/1464700108086364>

4 Patan Jamal Vali v. State of Andhra Pradesh, (2021) 3 SCC 469 (Supreme Court of India).

5 Goethals, T., De Schauwer, E., & Van Hove, G. (2015). Weaving intersectionality into disability studies research: Inclusion, reflexivity and anti-essentialism. *Journal of Diversity and Gender Studies*, 2(1–2), 75–94. <https://doi.org/10.11116/jdivgendstud.2.1-2.0075>

6 World Health Organization. (n.d.). *Deafness and hearing loss*. <https://www.who.int/news-room/fact-sheets/detail/deafness-and-hearing-loss>

7 Government of India. (2016). *The Schedule*. In *The Rights of Persons with Disabilities Act, 2016* (Act No. 49 of 2016). India Code. https://upload.indiacode.nic.in/schedulefile?aid=AC_CEN_25_54_00002_201649_1517807328299&rid=308



artificial barriers for the deaf people in enjoying their fundamental human rights. Social Stigma, negative perception, traditional attribution of disability to *Karmaphala* (result of an earlier bad deed)⁸ etc. had oppressed the Deaf people like other disabled groups also.

In the modern understanding, social model of disability says that the deafness is also a result of social or environmental barriers. After the evolution of intersectionality theory, deafness is discussed in intersectionality with gender, culture, economic status, language, and many other social structures. So, the cotemporary scholarship on deaf studies view deaf women as disabled, women and a cultural group with sign language as their medium of communication. The deaf persons refer themselves as a cultural minority 'Deaf' (capital D)

The main challenges of the deaf community are the non-recognition of sign language, lack of technical or infrastructural support resulting in an inaccessible public life. Due to their different needs, they are denied education, employment, access to justice amongst others. Deaf are stereotyped and misunderstood as a dim-witted people. The mainstream media and entertainments portrayals of Deaf reflects these negative attitudes of society.⁹

Deaf women are more marginalised due the intersection of deafness with gender. Prominent Deaf Scholars like Gaylene Becker and Joanne Jauregui says that deaf women face more difficulty due to the gender and disability which confines them to the traditional roles of womanhood.¹⁰ On the other hands, some scholars like Michelle Fine and Adrienne Asche (1981) wrote about the reverse

stereotyping faced by deaf women also. According to them, they are denied of the traditional women roles and is considered less feminine.¹¹ They are denied access to education, legal assistance, employment, marriage, family etc. They are more prone to domestic violence.¹²

Status of Deaf Women in India

The Indian disability movement started towards the end of the twentieth century. The recognition of disability before that was very grim. The first legislation to have covered the disability rights was Persons with Disabilities Act, 1995 in which medical model of disability was applied. This Act of 1995 is now substituted by Rights of Persons with Disabilities Act, 2016 which is more progressive and speaks about an inclusive and right based approach to disability rights.¹³

The deaf women rights advocacy in India is mostly isolated although, around 23 lakhs women in India has hearing disabilities.¹⁴ It is mostly just a part of main disability movement in India. The disability rights movement in India itself is not sufficiently strong because of which protection of rights of disabled is not realised in a full manner.¹⁵

11 Fine, M., & Asche, A. (1981). Disabled women: Sexism without the pedestal. *Journal of Sociology and Social Welfare*, 8(2), Article 3.

12 Anderson, M. L., & Pezzarossi, C. M. K. (2014). Violence against deaf women: Effect of partner hearing status. *Journal of Deaf Studies and Deaf Education*, 19(3), 411–421. <https://doi.org/10.1093/deafed/enu004>

13 Jha, M. (2016, December 5). *The history of India's disability rights movement*. The Diplomat. <https://thedi diplomat.com/2016/12/the-history-of-indias-disability-rights-movement/>

14 National Statistics Office, Government of India. (2021). *Persons with disabilities (Divyangjan) in India: A statistical profile* (2021). https://www.nhfdc.nic.in/upload/nhfdc/Persons_Disabilities_31mar21.pdf

15 Feroze, V. R. (2020, December 3). *Six reasons India has no disability rights movement*. Mint. <https://www.livemint.com/opinion/online-views/six-reasons-india-has-no-disability-rights-movement-11607009531675.html>

8 Karna, G. N. (1999). *United Nations and rights of the disabled persons: A study in Indian perspective* (1st ed.). A.P.H. Publishing Corporation.

9 Singh, S. (2017, November 29). *5 films in which Bollywood insulted people with disabilities*. YourStory. <https://yourstory.com/2017/11/5-films-bollywood-disabilities>

10 Becker, G., & Jauregui, J. (1981). The invisible isolation of deaf women: Its effect on social awareness. *Journal of Sociology and Social Welfare*, 8, 249–258.

Social Status of deaf women in India

Deaf women in India face social stigma and are denied access to justice. The intersection of hearing disability and womanhood deprives of the basic rights, and they are susceptible to violence, discrimination and neglect. The traditional patriarchal attitudes in India treat women subordinate to men and restrict them to stereotypical gender roles such as motherhood, homemaking etc. However, in case of disabled women, it is the other way. Prof. Amita Dhanda speaks about the reverse gender stereotyping faced by disabled women in India where due to their disability, they are considered less feminine and are denied and deprived to right to marriage, motherhood etc.¹⁶ The deaf women in India are also victims of patriarchy as they are considered less compared to men in employment, education etc. The decision making regarding their treatment, education, marriage etc. are taken by the men in the family. They are considered asexual compared to other women who are not disabled. The right and access to disability benefits etc. are received more by men as per the empirical data.¹⁷

Many deaf women in India remains illiterate or are confined to primary education. The works done by organizations like Delhi foundation of Deaf Women, All India Association of Deaf women and National Association for the Deaf also reveal this neglect faced by the deaf women in India.

There are various research studies which show that deaf women do not enjoy sexual and reproductive rights, access to quality healthcare etc as they are often considered as asexual or hypersexual.¹⁸ Forceful

medical procedures like hysterotomy, sterilisation, abortions etc. are performed on disabled women in India. Due to communication barriers and lack of sign language interpreters, deaf women in India are many times uninformed about various health problems, reproductive rights etc. The sexual and domestic violence of deaf women is very rampant and often the perpetrator are their own partners.¹⁹ They are the silent victims of offences like domestic violence, rape, incest etc however are denied access to justice in many cases.

The social status of deaf women is so low that in many Indian communities, they are not considered with dignity, and their human rights are violated. The deafness, patriarchy and subordination of women make them inferior beings compared to other deaf people and hearing women. The families of deaf women are unable to understand their peculiar problems and often considers them intellectually challenged. The intersection of gender, disability, culture etc. has caused backwardness of deaf women in India.

Adoption of right-based and intersectionality approach in Legal Framework.

International laws

Article 51 of the Indian Constitution speaks about the duty to respect for international treaties which are obligatory to India.²⁰ Article 253 of the Constitution of India, provides for the duty of the Parliament to enact laws to specifically adopt international treaties.²¹ India is a party and ratifies various human

cwds.ac.in/wp-content/uploads/2017/11/Occasional-Paper-63-Renu.pdf

¹⁹ Johnston-McCabe, P., Buchanan, N. T., Porter, S., & Parker, L. (2011). Domestic violence and social support in a clinical sample of deaf and hard of hearing women. *Journal of Family Violence*, 26(1), 63–69. <https://doi.org/10.1007/s10896-010-9344-6>

²⁰ Government of India. (1950). *Constitution of India* (Art. 51).

²¹ Government of India. (1950). *Constitution*

¹⁶ Dhanda, A. (2008). Sameness and difference: Twin-track empowerment for women with disabilities. *Indian Journal of Gender Studies*, 15(2), 209–232. <https://doi.org/10.1177/097152150701500205>

¹⁷ Mehrotra, N. (2006). Negotiating gender and disability in rural Haryana. *Sociological Bulletin*, 55(3), 406–426.

¹⁸ Addlakha, R., & Nayar, M. (n.d.). *Disability and sexuality: Intersectional analysis in India*. Centre for Women's Development Studies. <https://www.>



rights conventions including CEDAW and UNCRPD. Both these laws are based on right- based and intersectionality approach. The United Nation's Convention on the Rights of Persons with Disabilities adopted in 2006 provides for equal recognition of human rights of the disabled persons with others. The Convention provides for an inclusive and barrier free environment to all disabled persons. The Convention provides for the protection of deaf women based on the above approaches. Article 3 of the UNCRPD speaks about the equality of disabled persons irrespective of their gender. Article 5 of The Convention prohibits the discrimination of disabled persons. The combined reading of Article 3 and 5 provides for an intersectional approach between gender and disability. Article 6 of the Convention specifically applies the word 'multiple discrimination' in connection with women with disabilities. Article 8 of the Convention directs the State parties to work for combating stereotypes and prejudices relating to sex and age. Article 9 of the convention speaks about the accessibility through sign language interpreters, live assistance etc. Further there are provisions for disabled person's access to justice, protection against torture, exploitation, violence etc.

The Convention on Elimination of all forms of Discrimination Against Women or CEDAW is a very important human rights instrument adopted in 1979 and entered into force in 1981. CEDAW provides for equal political, economic, social, cultural, and civil rights for women and applies to deaf women as well. UNCRPD and CEDAW constitutes the international legal framework for the protection of deaf women in India.

Indian Laws

The Rights of Persons with Disabilities Act, 2016 inspired from the UN disability law provides for accessibility to language (sign language), combat multiple discrimination, prevent violation of basic dignity, rights and speaks about the full enjoyment of human rights of disabled including deaf women. Section 4 of the speaks about the special provisions for women. The Act prohibits the cruel and degrading of India (Art. 253).

treatment and Section 7 protects from abuse and violence. Section 10 protects the reproductive rights of the women. The Act also provides for inclusive education and lays emphasises on sign language training. Thus the Act is a comprehensive legislation incorporating the elements of right based and intersectionality theories.²²

The Government of India has introduced certain policies and programmes for the disabled in India such as Sugamya Bharat Abhiyan to bring accessibility to disabled in public places etc. Similarly, there is a provision of 4% reservation for disabled in Government jobs and 5% reservation in higher education institutions. Various States have also come up with their own systems of welfare policies for disabled.

Judicial Decisions

There are several landmark decisions of the Indian Supreme Court and High Courts speaking and interpreting the rights of the disabled. The concept of intersectionality has been discussed in the case of *M. Sameeha Barvin vs The Joint Secretary, the Madras High Court*²³. In the case, the Madras High Court held against refusal of sports authority to accommodate a deaf woman candidate in Deaf World Athletic Championship because she is a woman, The Madras High Court held that it is a violation of Article 15 (1) of the Constitution of India. The Supreme Court applied the right- based approach and intersectionality theory in many landmark cases on disability like *Union of India v. National Federation for the Blind & ors*²⁴, *National Federation for the Blind v. Sanjay Kothari, Secy. Deptt. of Personnel*²⁵ and *Rajeev Kumar Gupta*

22 Rights of Persons with Disabilities Act, 2016
23 *M. Sameeha Barvin vs The Joint Secretary*, (2022) 1 MLJ 466 [54].

24 *Union of India v. National Federation for the Blind & Ors.*, (2013) 10 SCC 772 (Supreme Court of India).

25 *National Federation for the Blind v. Sanjay Kothari, Secretary, Department of Personnel*, (2015) 9 SCALE 611 (Supreme Court of India).

and Ors. v. Union of India²⁶ and Siddaraju v State of Karnataka and ors²⁷, while upholding special provisions for the disabled from backward classes.

Status of Deaf women in India: Implementation Gaps

It can be observed that deaf women are unable to enjoy their basic rights and protection. There are institutional, infrastructural, implementation and accessibility gaps in implementing the laws for deaf women in India. The intertwined problems of gender, disability, culture are the reasons for this. They are the victims of patriarchal biases where deaf men are more advantaged than the deaf women in access to opportunities, concessions, higher education etc. Nilika Malhotra's empirical study in Haryana revealed how disabled women are less privileged than men and considered not competent in sexuality, reproduction, marriage etc.²⁸

The deaf women who can go beyond the elementary education and get into high level jobs are very less. The instances of violence on deaf women common due to their hearing issues, lack of education, low self-esteem and barriers in access to justice.^{29,30,31} The Human Rights Watch published a report in 2017 on barriers to justice and

26 *Rajeev Kumar Gupta & Ors. v. Union of India*, (2016) 13 SCC 153 (Supreme Court of India).

27 *Siddaraju v. State of Karnataka & Ors.*, (2020) 4 SCC 228 (Supreme Court of India).

28 Mehrotra, N. (2006). Negotiating gender and disability in rural Haryana. *Sociological Bulletin*, 55(3), 406–426.

29 Sengupta, S. (2018, November 7). *Facing abuse from within the disability sector: My #MeToo moment*. Feminism in India. <https://feminisminindia.com/2018/11/07/me-too-disability-sector/>

30 Pethe, S. (2020, November 2). *An open letter to the deaf daughter who died*. Feminism in India. <https://feminisminindia.com/2020/11/02/deaf-girl-rape-palwal/>

31 Bhattacheryya, U. (n.d.). *'Invisible' survivors: How the deaf suffer from sexual violence*. The Quint. <https://www.thequint.com/videos/deaf-mute-survivors-sexual-violence-sign-language#read-more>

support services for sexual assault survivors in India, particularly for women with disabilities.³²

There are barriers in education and employment due to inadequacy of trainers, interpreters and teachers in sign language. The data of World Federation of the Deaf corroborates this.³³

The National Commission of Women along with Society of Disability and Rehabilitation studies published a study on various states in India in which they identified that inaccessibility to workplaces, reluctant attitude of employers, lack of education etc. rather than medical or physical barriers has been the reason for the low employment rates of deaf women³⁴

CONCLUSION AND SUGGESTIONS

The disability perspective of gender laws and gender perspective of disability laws are very crucial in a right-based approach to legislation. Therefore, the harmony between intersectionality and right-based approach is of paramount importance in the effective realisation of deaf women rights. The United Nations Office of the High Commissioner for Human Rights (OHCHR) had told, "a rights-based approach integrates the norms, standards, and principles of the international human rights system into the plans, policies, and processes of development."³⁵ The law on disability do speak about

32 Human Rights Watch. (2018, April 3). *Invisible victims of sexual violence: Access to justice for women and girls with disabilities in India*. <https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities>

33 World Federation of the Deaf. (2013). *Deaf women and girls not able to enjoy basic human rights*. https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRPD/DGD/2013_Submissions/20.WorldFederationDeaf.pdf

34 Society for Disability and Rehabilitation Studies, & National Commission for Women. (n.d.). *First country report on the status of disability in India*.

35 Secretariat for the Convention on the Rights of Persons with Disabilities, Department of



the inclusivity, barrier-free environment and special provisions for women, children etc. However, the realisation of these benefits is an issue. Campbell says the mere technical implementation of disability law is one of the most hypocritical things in disability justice movements.³⁶ Similarly, if the existing disability laws cannot address the specific issues of deaf women, then the legislative purpose is not attained.

The deaf women in India are marginalised due to the binary consideration of disabled rather than looking at the disability through an intersectional lens. There is a scarcity of data regarding the condition of deaf women in India. It is important to recognise the unique and intersecting identities of deaf women and further provide an accessible and barrier free environment to them. The policies and law reforms should follow an inclusive and intersectional approach. Dan Goodley speaks about the critical approach to disability.³⁷ Therefore, the implementation of disability and gender specific laws, programmes and policies should keep in mind the non-binary identities of disabled including deaf women

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36 Brown, N., & Leigh, J. (Eds.). (2020). *Ableism in academia* (pp. 202–223).

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