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The Global #MeToo Movement

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CHAPTER 34

Women with Disabilities: Forever on the Edge of #MeToo?

Lucy-Ann Buckley[1]

Introduction

In 2006, a seventeen-year-old deaf-mute girl, known only as RPB, was raped in the Philippines by a neighbor. Supported by her sister, she made a police complaint later that day. She was interviewed by a male police officer in breach of regulations. The police did not have a sign language interpreter, but RPB's sister was able to interpret for her. The police wrote out RPB's statement in Filipino, which she could not read because the education system for the deaf was almost exclusively based on written English. She underwent a medical examination; she then had to wait nearly five years for her case to be heard in court. During this time, she received no counseling or support services and lived in proximity to her rapist. Most of the delay was due to the lack of sign language interpreters in the court system. Eventually, some interpretative support was obtained from a non-governmental organization, but RPB was still left without interpretation for significant parts of the hearing.

On the day of the hearing, RPB had to wait long hours, in the presence of her rapist, for the case to be heard. The court then acquitted the defendant, holding that RPB was not a credible witness and had failed to prove that she had not consented to sex. Ironically, there was no interpreter in court at this point to explain the verdict to RPB. The court said that RPB had not acted reasonably; an ordinary Filipina would have summoned "every ounce of her strength and courage to thwart any attempt to besmirch her honour and blemish her purity." The court was particularly critical of RPB's failure to shout for help, saying that "her being a deaf mute does not render her incapable of creating

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noise." Essentially, RPB's failure to act like the "ideal victim" undermined her credibility.

RPB subsequently brought a complaint to the CEDAW Committee (see below), which considered that the decision to acquit the accused was based on harmful gender myths and stereotypes, and that RPB had been denied the right to a fair trial. Although the verdict could not be overturned, the committee recommended that the Philippines should review its rape laws and interpretation policy, and that RPB should receive compensation and free counseling.[2]

RPB's story illustrates many of the problems facing women with disabilities in relation to gender-based violence. It seems likely that, as a neighbor, RPB's rapist targeted her specifically because he knew she had a disability. Research demonstrates that women and girls with disabilities are at a significantly increased risk of violence and sexual abuse compared to women without disabilities[3] and men with disabilities.[4] It has been estimated that the likelihood of rape or physical or sexual abuse is at least two[5] and possibly three times higher for women with disabilities than those without.[6] Within this broad figure, there are further intersections—for instance, while the risk of abuse is high for all children with disabilities (almost four times higher than for children without disabilities), the risks are even higher for girls with particular impairments—those who are deaf (like RPB), or who are blind or autistic, or who have intellectual, psychosocial, or multiple disabilities (again like RPB). Indigenous girls and women with disabilities face a higher risk of early marriage, sexual violence, and unwanted pregnancy. Other noteworthy intersections are based on race, sexuality, poverty, or involvement in humanitarian crises or conflict or post-conflict settings, where women with disabilities are particularly vulnerable.[7]

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2. CEDAW Communication No. 34/2011, *R. P. B. v. the Philippines.*

3. Lisa Schur et al., People with Disabilities: Sidelined or Mainstreamed? 177 (2013).

4. Ingrid van der Heijden & Kristin Dunkle, *Preventing violence against women and girls with disabilities in lower- and middle-income countries (LMICs)*, What Works to Prevent Violence Against Women and Girls Evidence Review, Sept. 2017, https://www.whatworks.co.za/documents/publications/114-disability-evidence-brief-new-crop-3/file+&cd=1&hl=en&ct=clnk&gl=ie&client=firefox-b-ab.

5. 57th Session of the Commission on the Status of Women, *Fact Sheet: Violence Against Women and Girls with Disabilities,* Feb. 2, 2013.

6. Rishi Iyengar, *Women with Disabilities are Three Times More Likely to Face Abuse: Report,* Time Health, Mar. 6, 2015, http://time.com/3734961/women-with-disabilities-three-times-as-likely-to-be-raped-human-rights-watch/.

7. For a detailed account of different disability intersections, see Catalina Devandas Aguilar, *Report of the Special Rapporteur on the Rights of Persons with Disabilities (theme: sexual and reproductive health and rights of girls and young women with disabilities)* (July 14, 2017) (A72/133) ('Report of the Special Rapporteur'), para 35.

However, RPB's story also illustrates many of the systemic barriers that severely limit the ability of women with disabilities to access justice. These include hostile, uninformed, and inaccessible courts and complaints procedures, the application of restrictive gender stereotypes, and the lack of effective remedies. The effect of harmful gender stereotypes can be even more pronounced in situations involving disability: in RPB's case, the stereotype of the "ordinary Filipina" who would struggle, shout, and make noise disadvantaged all female rape victims, but had a particularly harsh impact on RPB, given her greatly reduced capacity for noise-making.

International Human Rights Framework

Violence against women with disabilities has been increasingly recognized in international human rights law. The 1979 UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) does not expressly reference gender-based violence. However, the CEDAW Committee, which monitors implementation of the convention, has interpreted it to encompass gender-based violence as an aspect of discrimination, both in relation to individual complaints (as in RPB's case) and through a series of general recommendations (non-binding but highly persuasive treaty interpretations). General Recommendation No. 35 (2017) (updating General Recommendation No. 19, made in 1992)—defines gender-based violence as "violence which is directed against a woman because she is a woman or that affects women disproportionately." This expansive approach includes acts that inflict physical, mental, or sexual harm or suffering, deprivation of liberty, and related threats or coercion. Intersectional gender-based violence is explicitly recognized, including violence against women with disabilities. The UN Special Rapporteur on violence against women, its causes and consequences has also emphasized that violence particularly affects marginalized women, including women with disabilities, due to the effects of multiple layers of discrimination.[8]

Intersectional discrimination against women and girls with disabilities is explicitly recognized by Article 6 of the UN Convention on the Rights of Persons with Disabilities (CRPD), in force since 2008. Although Article 6 itself does not explicitly mention gender-based violence, the Preamble to the CRPD notes that women and girls with disabilities are often at greater risk of violence,

8. The UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, *15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences (1994-2009); a Critical Review* (2009) Office of the UN High Commissioner on Human Rights, p. 42; Rashida Manjoo, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences,* May 2, 2011 (A /HRC/17/26), p. 28.

exploitation and abuse. Furthermore, Article 6 must be taken into account in interpreting other provisions in the CRPD, including the rights to liberty, education, employment, health, and access to justice. Of specific relevance to harassment are the rights to integrity of the person (including bodily and mental integrity) in Article 17, and the right to freedom from violence, exploitation, and abuse contained in Article 16. Article 16 also explicitly references the gender-based aspects of such abuse.

Article 6 is amplified by General Comment No. 3, adopted by the CRPD Committee in 2016. This again provides an authoritative though non-binding interpretation of Article 6. General Comment No. 3 repeatedly highlights not only the intersection of gender and disability in general, but the importance of further intersections, such as those based on refugee or migrant status, sexual orientation, race or ethnicity, age and religion, or based on particular kinds of disability (for instance, multiple disabilities, albinism, intellectual, psychosocial or sensory conditions, or physical impairments). It outlines the scale of intersectional violence against women with disabilities, highlighting that they are often at greater risk of violence, injury, abuse, neglect, and exploitation than women without disabilities. It also recognizes that violence may be interpersonal or structural—in other words, violence is not just caused by individual perpetrators, but results from social attitudes, ideologies, practices, and institutions, including legal rules. This point has also been emphasized by the CEDAW Committee in General Recommendation No. 35.

The CRPD has been ratified (made legally binding) by 177 countries to date, though there are notable exceptions, such as the United States. Ratification obliges UN member States to take positive steps to promote equality and eliminate discrimination, so the CRPD has a significant impact on national legal systems. However, only ninety-three countries have ratified the Optional Protocol to the CRPD, which permits individuals to complain directly to the UN when their rights have been breached. The CRPD also has an effect at supra-national level: for instance, the European Union is a signatory and is therefore required to interpret relevant areas of its law in light of the treaty.

Other international measures also cover disability and sexual abuse or harassment, though not all recognize intersectionality. The UN Convention on the Rights of the Child, which applies to children up to the age of eighteen, requires States to protect children from sexual exploitation and abuse. It also specifies that all rights under the convention shall apply without discrimination, including discrimination based on sex or disability. Article 23 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003), ratified by thirty-six States to date, requires signatories to ensure that women with disabilities are protected from violence, including sexual abuse. By contrast, although the European Union has a legal framework to combat

harassment based on gender, disability, race, and other grounds,[9] it does not yet provide a remedy for harassment based on a combination of these grounds. Furthermore, EU law accords different levels of protection to race, gender, and other protected characteristics, such as disability. Protection is broadest in relation to race and covers harassment in contexts other than employment (e.g., education, healthcare, and access to services). However, gender protection is narrower, and disability protection is narrower still, applying only to employment and vocational training. Therefore, even if EU law covered intersectional claims, harassment based on both gender and disability would not be covered outside of employment and vocational training.

Most recently (2019), the International Labour Conference adopted a new Convention and Recommendation on Violence and Harassment in work and related activities. The convention, which is not yet in force, recognizes that violence and harassment in the world of work can constitute a human rights violation or abuse. It then defines "violence and harassment" as behaviors, practices, or threats "that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm." The convention is notable for its explicit recognition of the impact of "multiple and intersecting forms of discrimination," and the need to protect workers from "one or more vulnerable groups" or "groups in situations of vulnerability." The reference to vulnerable groups is amplified in the non-binding recommendation, which states that this should be interpreted by reference to international labor standards and human rights instruments.

On the Edge of #MeToo

Given the scale of the problem, and the level of international recognition, why have the experiences of women and girls with disabilities been so overlooked by #MeToo? It has been suggested the failure to gain traction, despite the best efforts of activists,[10] may partly be due to the emphasis of #MeToo on sexual

9. The EU legal framework includes the Racial Equality Directive (Directive 2000/43/EC), the Framework Employment Directive (Directive 2000/78/EC), dealing with disability, sexual orientation, and other grounds; the Recast Equal Treatment Directive (Directive 2006/54/EC), dealing with gender discrimination in relation to employment and social security; and Directive 2004/113, dealing with gender discrimination in relation to public goods and services (excluding education).

10. See, e.g., S.E. Smith, *Disability Should Be Integral to the #MeToo Conversation,* Rewire News, Nov. 1, 2017, https://rewire.news/article/2017/11/01/disability-integral-metoo-conversation/; Tamara Abueish, *The #MeToo Movement has a Serious Problem Addressing the Experiences of Women with Disabilities,* The Tempest, Mar. 5, 2018, https://thetempest.co/2018/03/05/culture-taste/women-disabilities-metoo-campaign/; Anne Wafula Strike, *Disabled Women See #MeToo and Think: What About Us?,*

harassment in employment.[11] Since people with disabilities are much less likely to be employed, and women with disabilities are even less likely to be employed than men with disabilities,[12] an emphasis on workplace harassment is less likely to speak to their concerns. This, however, seems unlikely, given that there are still significant numbers of women with disabilities in the workforce and the figures for gender violence are so high for women with disabilities. A related possibility is that, since disabled people who are employed are more likely to be on low incomes and have precarious contracts,[13] they may be less likely to protest at mistreatment. This may certainly be a contributing factor, though it is also true of women generally,[14] so it is unlikely to be the full explanation. A further suggestion is that the emphasis of the disability movement on accessibility has contributed to a comparative neglect of disability-related harassment.[15] However, this does not explain its neglect by other feminists.

It seems more likely that the widespread exclusion of women with disabilities from #MeToo may be due to other factors. First, the situations in which disability-related abuse is likely to occur, the nature of certain impairments, and attitudes toward women with disabilities who complain about gender-based violence, are likely to prevent reporting. Second, social understandings of sexual harassment and other gender-based violence may exclude the experiences of women with disabilities from public consideration, particularly where the violence is state sanctioned. Each of these points will be examined in turn.

Contextual Barriers

Much of the violence against women with disabilities occurs in congregated settings (such as residential care homes) and affects women who are often

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The Guardian, Mar. 8, 2018, https://www.theguardian.com/commentisfree/2018/mar/08/disabled-people-metoo-womens-movement-inclusion-diversity; Nidhi Goyal, *Why Does the Women's Rights Movement Marginalise Women with Disabilities?,* The Guardian, Sept. 7, 2016, https://www.theguardian.com/global-development/2016/sep/07/why-does-womens-rights-movement-marginalise-women-with-disabilities-nidhi-goyal.

11. Shelley L. Tremain & Melinda C. Hall, *Is the #MeToo Movement Ableist?,* Discrimination and Disadvantage, Dec. 10, 2017, https://philosophycommons.typepad.com/disability_and_disadvanta/2017/12/is-the-metoo-movement-ableist.html.

12. See, *e.g.*, David Pettincchio & Michelle Maroto, Factors in Studying Employment for Persons with Disability 3-33 (Barbara M. Altman ed., 2017).

13. *Ibid.*

14. Caroline Criado Perez, Invisible Women: Exposing Data Bias in a World Designed for Men 133 (Chatto and Windus, 2019).

15. Theresia Degener, European Union Non-Discrimination Law and Intersectionality 32 (Dagmar Schiek and Anna Lawson, Eds, 2011).

heavily institutionalized. In such environments, women who are vulnerable to begin with (for instance, women with intellectual or psychosocial disabilities) are often socialized to be compliant and to tolerate invasive procedures. They may also be over-medicated, heavily reliant on caregivers, or punished for perceived infractions. They are unlikely to have access to social media or legal representation, may not always be capable of self-advocacy, and their family members may be reluctant to interfere and jeopardize the provision of care. Although the CRPD requires facilities and programs for people with disabilities to be independently monitored, this does not always happen. Health care authorities may overlook physical signs of abuse on the assumption that a disabled woman is likely to have injured herself, either accidentally (in relation to mobility impairments or physical conditions such as brittle bones) or intentionally (in connection with psychosocial conditions such as schizophrenia).

In these circumstances, it is unsurprising that complaints are unlikely to be made or heard, and it is commonplace that sexual abuse is ignored or concealed, often for years. In a recent Irish example, a severely intellectually disabled and non-verbal woman known as "Grace" was left in the care of an abusive foster family for twenty years. Concerns were raised repeatedly over this period, with recurring observations of physical injuries and neglect. In 1996, serious allegations of sexual abuse were made against the foster father in respect of another foster child. These allegations were not properly investigated, but it was decided that no other children should be placed in the home. Arrangements were made to remove Grace but, inexplicably, this did not happen. Grace was finally removed in 2009, some thirteen years later. Investigation later disclosed that Grace had suffered both physical and sexual abuse of the worst kind, including repeated rape with implements, which was sustained over her twenty years of residence in the home. She was also defrauded of money. Even after an internal investigation was eventually completed, the responsible health care authority waited three years to inform the police.[16] Although Grace was later awarded compensation, no one in the responsible health authority was held accountable for her treatment.

Women with disabilities are also highly likely to be abused in intimate relationships, often by family members, partners, and caregivers.[17] This adds a particular layer of complexity, as complaining about abuse may entail the loss

16. Paul Hosford, *HSE "Took Three Years to Contact Gardai About Grace Report,"* THEJOURNAL.IE, Mar. 5, 2017, https://www.thejournal.ie/hse-grace-report-gardai-3272046-Mar2017/.

17. See, e.g., Joseph Shapiro, *The Sexual Assault Epidemic No One Talks About,* NATIONAL PUBLIC RADIO, INC. (US), Jan. 8, 2018, https://www.npr.org/2018/01/08/570224090/the-sexual-assault-epidemic-no-one-talks-about, outlining the findings of a year-long investigation into U.S. Justice Department figures.

of support. It is not easy to complain about abuse if a caregiver's presence is essential for daily functioning, such as the ability to wash, dress, eat, travel, or care for children. It is therefore unsurprising that sexual assault is even less likely than usual to be reported where the victim has a disability.[18] The difficulty is increased by additional challenges that face those who do report abuse, such as the risk of being institutionalized.[19] There may also be a fear of retaliation in a context where it may be very difficult to escape.[20] Rape crisis centers and women's refuges are often inaccessible to women with mobility impairments, and are unsuitable for women with sensory impairments.[21] They may also lack interpreters for D/deaf women,[22] as may the police. Where, then, is the disabled woman to go for help? Although the CRPD requires states to provide protection services (including reporting mechanisms) that are age-, gender-, and disability-sensitive, this standard is by no means met in practice.

The widespread institutionalization of women with disabilities reflects a general pattern of exclusion, where disabled people are effectively barred from social participation, including public transport, employment, cultural participation, and mainstream education. This enforced invisibility may also contribute to broader legal and social barriers that prevent women with disabilities from having their voices heard, or from being considered worth protecting. This is particularly the case where other social power imbalances apply. Human Rights Watch highlights the case of Chandra, a twelve-year-old Indian girl with cerebral palsy, who was kidnapped, raped, and left bleeding in a field near her home in 2013. As she could not speak, sit, stand, or walk independently, she could not call for help or go home. She later died due to health complications. Her family came under significant pressure from local leaders not to pursue legal action against the perpetrator, who was politically well-connected.[23] In another Indian case, a man who raped and sexually abused his two disabled sisters because his father had left them some land was supported by the local villagers. The sisters ultimately had to go into hiding and could not make a legal complaint.[24]

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18. See the Report of the Special Rapporteur, *supra* note 7, at para 36.

19. *Ibid.*

20. *Ibid.*

21. See, e.g., Frances Ryan, "*I'm tired and desperate" – a disabled victim of domestic violence on her struggle to survive*, The Guardian, Sept. 19, 2019, https://www.theguardian.com/lifeandstyle/2019/sep/19/disabled-victim-of-domestic-violence-on-her-struggle-to-survive.

22. "D/deaf" covers all people with some type of deafness.

23. Abhishek Kumar Mehan, *Invisible victims of sexual violence: access to justice for women and girls with disabilities in India,* Human Rights Watch, Apr. 3, 2018, https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities.

24. *Ibid.*

Feminists have long highlighted institutional barriers to women making complaints of sexual violence, such as police hostility. However, the exclusion of women's voices from the legal process is magnified where a complainant is non-verbal or is unable to describe her experiences in a way that is considered to be legally sufficient. Complainants with intellectual disabilities are commonly deemed to lack sufficient legal capacity to initiate a complaint or give evidence.[25] In a well-known case in the Netherlands, a sixteen-year-old girl was raped in a residential care home. Under Dutch law, her father was unable to make a complaint on her behalf, as she was over sixteen. However, she was legally unable to make a complaint herself, as she had an intellectual disability. Her rapist was therefore not prosecuted. (The European Court of Human Rights eventually found that the girl's human rights had been breached).[26] In a Canadian case, an intellectually disabled young woman was repeatedly sexually assaulted by her mother's partner. The trial judge held that the victim could not testify because she had not shown she understood the duty to speak the truth. This decision was overturned by the Supreme Court of Canada on the grounds that it effectively permitted sexual abuse of the intellectually disabled with near impunity.[27] However, capacity issues may go beyond legal rules, as similar assumptions may undermine the complainant's credibility in complaints made to health and education professionals, social workers, or caregivers. For this reason, the CRPD requires states to implement "effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities is identified, investigated and, where appropriate, prosecuted."[28] Unfortunately, such measures are commonly either entirely lacking or inadequately implemented.

Feminists have also commonly critiqued "rape myths," such as assumptions that women who consume alcohol or wear revealing clothing are likely to consent to sex. These myths are exacerbated in the case of women with disabilities by what might be termed "disability myths." Examples include the belief that women with disabilities are asexual, or that they are hypersexual.[29] Neither myth has any basis in reality,[30] yet both serve to undermine complainants, either

25. *Ibid*. The General Comment on Article 6 of the CRPD classifies the refusal to recognize the testimony of women with intellectual or psychosocial disabilities in court proceedings as direct discrimination, which has the effect of denying women with disabilities access to justice.

26. *X and Y v. The Netherlands*, 8978/80, (1985) 8 EHRR 235, [1985] ECHR 4.

27. *R v. DAI*, 2012 S.C.C. 5.

28. Article 16 CRPD.

29. General Comment No. 3 on Article 6 CRPD, para 30; Report of the Special Rapporteur, *supra* note 7, para 18.

30. Report of the Special Rapporteur, *supra* note 7, para 18.

by suggesting that women with disabilities are unlikely to be sexually abused (notwithstanding all the evidence to the contrary), or that they are sexually voracious or desperate. When combined with the usual gender stereotypes that affect women's credibility (such as those discussed earlier in relation to RPB), the effect is often to fatally undermine any case. Further stereotypes may undermine the credibility of women with specific disabilities, e.g., a belief that women with psychosocial disabilities are confused or unlikely to recall events clearly, or that women with autism misinterpret social signals.[31] In another Indian example cited by Human Rights Watch, the police response to a reported gang rape of a woman with a psychosocial condition was, "She's mental. Why should I pay attention to her?"[32]

The myth of asexuality is particularly problematic as it contributes to other systemic issues. Girls with intellectual disabilities are often thought to have no need of education or information about sexuality and reproduction, particularly as they are commonly considered to lack the capacity to make decisions about sexual activity.[33] In practice, this denial of education is seriously disempowering, and further reduces the ability of women with intellectual disabilities to protest against inappropriate behavior, or to protect themselves from unwanted pregnancy or sexually transmitted infections.[34] The CRPD seeks to address this by requiring the provision of "information and education on how to avoid, recognize and report instances of exploitation, violence and abuse" to both carers and persons with disabilities,[35] but again, this may not often happen in practice.

Social Understandings of Gender-Based Violence

The broad failure of #MeToo to highlight the experiences of women with disabilities may also be attributable to the complex nature of gender-based violence, which is often different in the disability context. In this disability is not unique—gender-based violence may also look different for other intersectional

31. See, e.g., Alaina Leary, *Don't Use 'Functioning Labels' to Victim-Blame Me,* Rooted in Rights, Apr. 19, 2018, https://www.rootedinrights.org/dont-use-functioning-labels-to-victim-blame-me/.

32. Abhishek Kumar Mehan for Human Rights Watch, "Invisible victims of sexual violence: access to justice for women and girls with disabilities in India" (Apr. 3, 2018), https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities.

33. Report of the Special Rapporteur, *supra* note 7, para 19.

34. *Ibid*, para 19.

35. Article 16 CRPD.

groups, such as Muslim women or lesbians. This is not to say there are no commonalities—rape and sexual assault are obvious examples—but rather that additional forms of abuse also exist, which are context-specific. In this sense, it can be useful to think of gender-based violence as comprising a wide array of controlling and coercive behaviors that may or may not have sexual aspects or overtones. Although this is recognized by the UN committees on CEDAW and the CRPD, it may not be generally understood, and persons outside a particular group may be unaware of nuances that would be appreciated within the group.

So, what does gender-based violence look like in the disability context? The UN Special Rapporteur on the Rights of Persons with Disabilities has highlighted multiple forms of gender-based violence experienced by women and girls with disabilities. Not all fall within common understandings of sexual harassment, the primary focus of #MeToo. For instance, women and girls with disabilities, particularly intellectual or psychosocial disabilities, are often subjected to forced sterilization, for reasons such as preventing pregnancy, controlling menstruation, and eugenics.[36] This form of gender-based violence is state sanctioned and happens globally, in countries as diverse as the United States, Australia, China, India, South Africa, and Norway, to name but a few.[37] Contraception is also frequently used for menstruation control, often without the woman's informed consent, but at the request of families and carers. The contraception methods used (such as injections, intrauterine devices, and even hysterectomies) are usually much more invasive than for women without disabilities, to make it easier for carers and service providers.[38] Women and girls with disabilities may also be subjected to forced abortions and gynecological checks (so-called "virgin testing"), again based on eugenic concerns.[39] Additionally, they may be treated with estrogen for so-called "growth attenuation," that is, to prevent entry into puberty and maintain a lower height or weight, again to make care easier.[40] In a well-known case in the United States that generated considerable ethical, medical, and legal debate, the parents of Ashley X, a severely disabled six-year-old girl, opted for a combination of estrogen therapy, hysterectomy, and breast bud removal to maintain a low body weight and improve her quality of life.[41] This has since become known as the "Ashley Treatment."

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36. *Ibid*, para 29.

37. Ashwin Roy et al., *The Human Rights of Women with Intellectual Disability* 105(9) J. of the Royal Soc. of Medicine 384 (2012).

38. Report of the Special Rapporteur, *supra* note 7, paras 31-32.

39. *Ibid.*

40. *Ibid.*, para 32.

41. Steven D. Edwards, *The Case of Ashley X* 6(1) Clinical Ethics 39-44 (2011).

The General Comment on Article 6 of the CRPD also highlights disability-specific forms of harm, such as: withholding or denying access to medication; removing or controlling communication aids; or refusing to assist with communication; refusal by caregivers to assist with hygiene or sanitation; withholding food or water; disability-specific verbal abuse; harming or threatening to harm pets or assistance animals; and controlling access to others or to social media. Other kinds of disability-specific harassment include: commenting about, removing, or touching mobility devices (e.g., grabbing a woman's wheelchair or forcibly moving her in a particular direction); barricading a disabled woman behind furniture so that she is unable to leave; and asking intrusive questions about whether and how she has sex, or about her body. Such harassment may or may not have sexualized overtones depending on the context and delivery.[42]

The General Comment also notes that women with disabilities who are institutionalized are exposed to additional forms of violence such as forcible undressing by male staff, forced administration of psychiatric medication, and overmedication (which can reduce the ability to resist, remember, or describe sexual violence—in effect, akin to a date rape drug). Such women are also less likely to be able to access helplines or reporting mechanisms, even if a complaints procedure exists. In a United Kingdom case, a severely disabled woman who was imprisoned for a number of days was left in inappropriate conditions, which included being forced to accept male assistance for toileting purposes. She alleged that on one occasion she was left sitting on a toilet for three hours until she agreed to let a male officer clean her. She also claimed that a female nurse removed her bedclothes in the presence of two male prison officers, exposing her naked lower body. The European Court of Human Rights later held that the claimant's treatment was humiliating and degrading, even though this was not intentional.[43]

Women with disabilities may also be subjected to specific harms due to endemic superstitions—for instance, that men with HIV/AIDS can be cured by having sexual intercourse with a disabled woman, particularly a virgin or a woman with albinism.[44] This cultural myth exposes women with albinism not only to violence but also to sexually transmitted infections and unwanted pregnancies. Women with albinism may also be subject to ritual killings to obtain their body parts for use in witchcraft.[45]

42. Smith *supra* note 10.

43. *Price v. UK* [2001] ECHR 458 (UK).

44. Report of the Special Rapporteur, *supra* note 7, para 22.

45. CEDAW Committee, *Concluding Observations on the Report of the United Republic of Tanzania,* Mar. 9, 2016, para 18.

Women and girls with disabilities are disproportionately affected by a wide range of gender-based violence, including infanticide and trafficking, forced and child marriage, female genital mutilation, deprivation of liberty and domestic violence.[46] The UN Special Rapporteur on violence against women, its causes, and consequences has also noted that women from intersectional or marginal groups, including women with disabilities, are particularly affected by online violence.[47]

Finally, it should be noted that gender-based violence may in fact *cause* disability in many cases, due to physical or mental injuries (such as post-traumatic stress disorder and depression), pregnancy-related complications, and sexually transmitted infections.[48]

This wide range of harms suggests that the focus of #MeToo may often be too narrow to capture the kinds of abusive behavior experienced by women with disabilities. However, a further difficulty arises from the definition of sexual harassment as *non-consensual* behavior. This has proved problematic for women in general as failure to protest sufficiently may be legally construed as consent, regardless of the power dynamics at play or the woman's ability to protest. This is clearly illustrated by RPB's case, where the complainant's protests were deemed insufficient, even though she had struggled as much as she could against her much stronger attacker.

However, particular problems arise for women with disabilities, who commonly suffer violence in the context of medical treatment. This may go well beyond what was agreed, but the woman may not feel that she is in a position to protest, given the power imbalance and the fear of losing future medical care. A person without medical expertise may also be unable to say with certainty that a particular examination or treatment was unnecessary. These difficulties may be compounded by medical paternalism, which is particularly prevalent in relation to patients with disabilities. The jurist and former Chair of the CRPD Committee, Theresia Degener, describes an incident in which a woman was forced to use a tampon-shoot pistol (a medical device developed to assist women and girls with a weak arm function) to insert a tampon while sitting half-naked on a toilet in front of a number of male members of medical staff. When she initially refused to obey, she was told that if she did not do it herself, the men would do it for her. Eventually she complied, but was extremely upset.[49] In such

46. Report of the Special Rapporteur, *supra* note 7, para 34.

47. *Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective,* June 18, 2018 (A/HRC/38/47), para 28.

48. Schur et al., 177, *supra* note 3.

49. Degener 29, *supra* note 15.

a context, where the woman consented to or participated in some of what was done, and remained silent in the face of the rest, or was uncertain as to whether it was necessary, how is non-consent to be determined, even in her own mind, and even if she suffered significant distress? Tellingly, in the tampon incident described above, Degener highlights that the woman in question was uncertain as to whether this counted as sexual violence.[50]

Similar difficulties may arise in relation to general personal care and relationships, arising from what the disability activist Mia Mingus has termed "forced intimacy."[51] Essentially, this means that people with disabilities are forced to bare themselves to others, both physically and emotionally, in order to access basic care and support, such as help with dressing or personal hygiene. In this context, how meaningful can consent be, given that disabled people may have to consent to particular intimacies just to function?

Forever on the Edge?

How can the omission of women with disabilities from #MeToo be addressed? Clearly, there is a strong need to educate, inform, and raise awareness, not just among the disability community, but among the public at large. This should be part of a broader public conversation about what sexual harassment and gender-based violence may look like for different groups, since so much of #MeToo has come to focus on a comparatively narrow understanding of sexual exploitation and the contexts in which it occurs. In this sense, #MeToo needs to return to its roots as a broad feminist movement targeting all kinds of gender-based violence and coercion. Achieving this shift cannot be left solely to disability activists but requires commitment from feminists generally. All feminists need to amplify the voices of women with disabilities and other intersectional groups, and highlight their experiences, and why they matter.

However, although it should be possible to raise awareness of the scale of the problem, it is clear that there is no easy solution to the problem of gender-based violence against women with disabilities.[52] The CRPD plays a vital role in addressing this, both in terms of the principles it sets out and in terms of the obligations it places on States to address the rights of disabled persons holistically, including positively supporting their recovery from experiences

50. *Ibid.*

51. Mia Mingus, *Forced Intimacy: an Ableist Norm,* Leaving Evidence (Aug. 6, 2017, 4:31 p.m.), https://leavingevidence.wordpress.com/2017/08/06/forced-intimacy-an-ableist-norm/.

52. Van der Heijden & Dunkle, *supra* note 4.

of exploitation and abuse. Greater compliance with the CRPD would help to uncover the scale of the problem (through the collection of specific data), address many of the barriers that currently prevent women with disabilities from making legal complaints, and greatly reduce the potential for sexual and other abuse by reducing the social exclusion of disabled people generally. Given what is involved, this remains a longer-term project.