

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 8 | Issue 3
2025

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Inclusion through Law: Safeguarding the Dignity of the Disabled

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ABSTRACT

This research paper delves into the fundamental right to dignity for disabled persons, exploring the intricacies of its legal framework, practical challenges, and societal implications. Grounded in human rights principles, particularly the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities (CRPD), the study scrutinizes the conceptualization and realization of dignity within the context of disability rights.

Drawing upon a comprehensive review of national and international legal instruments, case law, and scholarly literature, the paper elucidates the multifaceted dimensions of dignity in the lives of disabled individuals. It examines how legal frameworks address issues such as autonomy, independence, non-discrimination, and respect for inherent worth, while also assessing the effectiveness of implementation mechanisms in safeguarding these rights.

Furthermore, the research critically analyzes the experiences of disabled persons within societal structures, elucidating the barriers, prejudices, and systemic inequalities that often undermine their right to dignity.

By synthesizing legal analysis, the paper identifies key areas for improvement in ensuring the full realization of the right to dignity for disabled persons. It calls for strengthened legal protections, inclusive policies, and transformative social attitudes that prioritize the inherent dignity and worth of every individual, regardless of their abilities or disabilities. Ultimately, the research contributes to a deeper understanding of the complex dynamics surrounding disability rights and underscores the imperative of upholding dignity as a cornerstone of human rights for all.

I. INTRODUCTION

“There is no greater disability in society than the inability to see a person as more”

-Robert M Hensel

Disability is a broad term that includes a wide range of limits, difficulties, and impairments that people encounter in different spheres of their lives. The term “disability” refers to

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conditions that limit a person's capacity to accomplish tasks, participate in activities, or fully participate in society on an equal basis with others. However, it may elicit diverse interpretations and connotations depending on the context and culture.

According to the ICF², the term “disability” refers to a broad range of impairments, activity limits, and participation limitations that are caused by the unfavorable interactions that occur between an individual (who has a health condition) and their contextual circumstances (personal and environmental). This definition emphasizes the comprehensive character of disability, acknowledging that it includes impediments related to cognitive, intellectual, psychosocial, and physical functioning as well as sensory or physical impairments that affect an individual's relationships with others and their surroundings. A sophisticated understanding of the interactions between a person's unique disabilities and the social, cultural, and environmental elements that influence their experiences and possibilities is necessary to comprehend disability. Disability is not just a medical or biological condition; rather, it is intricately linked to society attitudes, laws, and infrastructures that can either help or impede the inclusion and empowerment of people with disabilities.

The concept of disability is dynamic and ever-evolving, defying strict classifications and preconceptions. It acknowledges the variety and individuality of every person's experience, recognizing that a handicap is not a static characteristic but rather can change over time and in various circumstances. Adopting a social model of disability, therefore, means that instead of seeing people as essentially defective or flawed, the emphasis now is on identifying the societal barriers and inequalities that result in conditions that are incapacitating. Nobody on the planet is completely able or completely impaired. Those who are completely able-bodied now could become crippled tomorrow with just one unfortunate mishap. On the other hand, with advancements in medical science and the creation of specialized rehabilitation programs, individuals who are crippled today may become fully capable tomorrow.

II. DEFINITIONS OF DISABILITY

The definitions of disability vary from time to time and have thus been an issue of much debate. The definition ranges from definitions in aspects like medical, social, cultural, local and others. Disability is perceived differently by a doctor, an economist, a philanthropist and a social worker. A doctor perceives disability as a condition which renders an able-bodied person as incapable of taking care of his own life. A philanthropist looks at disability as a subject of tragedy, pity and charity. An economist looks at disability as a burden because of

² The International Classification of Functioning, Disability and Health

the economic dependence of the disable people on their loved ones and their less to no contribution towards the society and their families. And on the other hand, a social worker perceives disability as a reason of social exclusion of disabled persons.

Oxford's dictionary defines disability as "a physical or mental condition that limits a person's movements, senses, or activities."

According to the *Standard Rules on the Equalization of Opportunities for Persons with Disability United Nations, 1994* the term 'disability' encompasses within itself a number of diverse functional limitations occurring in any population in any country of the world. Disability can be physical, intellectual or sensory impairment or mental illness which may be permanent or transitory in nature.

Article 1 of the *United Nations Convention on the Rights of Persons with Disabilities, 2006* defines Persons with Disabilities as "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."³

The 1975 UN *Declaration on the Rights of Disabled Persons* (the Declaration) defined a "disabled person" as anyone "unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities."⁴

The definition of 'disability' prevailing in India has been provided under *Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995* as follows-

"Disability means:

- (i) Blindness;*
- (ii) Low vision;*
- (iii) Leprosy-cured;*
- (iv) Hearing impairment;*
- (v) Locomotor disability*
- (vi) Mental retardation*

³Article 1 UNCRPD, 2006, Adopted by UN General Assembly.

⁴ OHCHR, *Declaration on the Rights of Disabled Persons*, 9 December 1975, art. 1

(vii) *Mental illness*⁵

With the introduction of *the Rights of Persons with Disabilities Act, 2016* the definition of Disability has been expanded. The Schedule of the Act lays down six categories in which Disability is bifurcated and defined. These types are-

1. Physical Disability;
2. Intellectual disability;
3. Mental behaviour;
4. Neurological disability;
5. Multiple disabilities;
6. Any other category as may be notified by the Central Government.

The above categories are exhaustively dealt with under the Schedule of the Rights of Persons with Disabilities Act, 2016. The Central Government has reserved the right to notify any other category of disability as and when it thinks fit to add that particular disability.

III. LEGAL AND CONSTITUTIONAL FRAMEWORK

A. Universal Efforts

The United Nations has played a great role in raising global awareness about the need to care for and protect the disabled. The several resolutions passed by its General Assembly and the International Instruments issued by the UN are a testament to UN's efforts to protect the disabled.

UN's commitment to support the disabled had evolved since 1950 when a conference was organized to take a decision regarding the rehabilitation of those disabled due to injuries caused during World War II. The UN Secretariat, ILO, WHO, UNESCO, IRO, and UNICEF participated in the conference and arrived at a decision to establish international standards for the education, treatment, training and placement for disabled persons, with a special emphasis on the needs of the blind in underdeveloped areas.⁶

In the 1940s and 50s, the UN emphasized on promoting the Rights of the persons with disabilities by adopting social welfare approaches.⁷ In the 1960s, there was a change in approach, as now there was a demand for fuller participation by disabled persons in an

⁵Section 2(i) PWD Act, 1995.

⁶Anitha Saravanan, "Conquering disability the ICT way" I4d Magazine, Malaysia, 2007, p.10.

⁷Jamme E. Bickenback, "Disability Human Rights, Law and Policy", in Gary L. Alben, Katherine D. Seelman and Michael Bury (ed.), Handbook on Disability Studies, Sage Publications, 2005, p. 573.

integrated society.⁸ In the 1970s, the United Nations took a number of initiatives which embrace the growing international concept of human rights of persons with disabilities and equalization of opportunities to them.

The International Covenant on Economic, Social and Cultural Rights, 1966 came into force on 3rd January, 1976. The various rights covered under the Covenant are the right to work, right to education, right to health, right to culture, equal pay for equal work, right to safe place of work etc. These rights are also known as the Human Rights of the Second Generation and have found their place in various national and international instruments. Any absence of these rights would affect the dignity of all human beings.

The International Covenant on Civil and Political Rights, 1966 acknowledges the natural dignity and equal rights of all human beings based on the freedom, justice and global peace.

In 1971, the UN took pledge for a joint action and international cooperation and recognized the rights of mentally challenged to promote their rehabilitation and integration in normal life. The mentally retarded human beings were given same rights as other human beings. They were also given the right to financial security and a right to have a trained custodian for his protection and welfare.

Then *the UN Declaration on the Rights of Persons with Disabilities, 1975* came into picture which asserted that the disabled person shall enjoy the same primary rights as their fellow beings. They are at liberty to empower themselves to be self-sufficient. Through this declaration, they were given the right of no discrimination against them on the basis of color, race, sex, religion, language, etc.

The *United Nations (UN) Convention on the Rights of Persons with Disabilities* (hereinafter referred to as “the CRPD”, or “the Convention”) and its accompanying *Optional Protocol to the Convention on the Rights of Persons with Disabilities* (Optional Protocol) were welcomed by many states, civil society organizations, members of the disability community and other commentators when they were adopted by the UN General Assembly on 13 December 2006.⁹

The Convention marked a significant milestone in its drafting, adoption, and signing process. It was finalized in a notably shorter timeframe compared to other major international human

⁸Saurabh Jain, “Effectiveness of the Indian disability Law to enforce Human Rights of Persona with Disabilities”, AIR Journal, Vol. 91, April, 2004 p. 119.

⁹ Office of the United Nations (UN) High Commissioner for Human Rights (OHCHR), Committee on the Rights of Persons with Disabilities, *Convention on the Rights of Persons with Disabilities* (the Convention), 13 December 2006; and OHCHR, Committee on the Rights of Persons with Disabilities, *Optional Protocol to the Convention on the Rights of Persons with Disabilities* (the Optional Protocol), 13 December 2006. All UN human rights treaties are available from the OHCHR.

rights treaties and garnered an unprecedented number of signatories upon its opening for signature. Additionally, its negotiation involved various stakeholders, encompassing non-governmental and international organizations, as well as national human rights institutions.

Article 1 of the CRPD states that the Convention's main purpose is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."¹⁰

The Optional Protocol to the CRPD enables the UN Committee to receive complaints about rights violations from individuals or groups of individuals who believe that a state party has violated rights under the Convention. To be admissible, such complaints (referred to as communications) must not be anonymous, all available domestic remedies must have been exhausted and the alleged violations must have occurred after the Optional Protocol came into force in the relevant country.¹¹

Article 25 of the CRPD emphasizes the right to education for persons with disabilities, urging states to ensure inclusive education systems and lifelong learning opportunities without discrimination. Only 28% of countries globally provide constitutional guarantees for educational rights of children with disabilities.

Article 27 of the CRPD underscores the right to work for persons with disabilities, including opportunities for freely chosen or accepted employment in an inclusive and accessible labor market.

Article 14 of the CRPD mandates states to safeguard the liberty and security of persons with disabilities, with only 9% of constitutions explicitly guaranteeing this right, while 19% specify conditions under which liberty can be restricted for those with mental health conditions.

Article 21 of the CRPD stresses the freedom of expression and opinion for persons with disabilities, emphasizing their right to seek, receive, and impart information through various forms of communication on par with others.

B. Indian Efforts

In India, the Constitution has acted as a guardian of the persons with disabilities by providing them various rights and ensuring that they live a life with dignity.

¹⁰ OHCHR, Committee on the Rights of Persons with Disabilities, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, art. 1.

¹¹ The conditions for admissibility are set out in further detail in OHCHR, Committee on the Rights of Persons with Disabilities, *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, 13 December 2006, art. 2.

1. **Equality before the law:** Article 14 of the Indian Constitution¹² ensures equality before the law and equal protection of laws for all citizens. This means that persons with disabilities are entitled to the same legal protections and treatment as any other citizen. They cannot be discriminated against solely on the basis of their disability in matters of law.
2. **Non-discrimination:** Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. This provision extends to persons with disabilities, ensuring that they cannot be discriminated against in various aspects of life such as access to public places, employment opportunities, or educational institutions.¹³
3. **Equality of opportunity in public employment:** Article 16 guarantees equality of opportunity in matters of public employment and prohibits discrimination on the basis of disability. This means that persons with disabilities have the right to equal opportunities in government jobs and cannot be discriminated against in recruitment, promotion, or conditions of service.¹⁴
4. **Protection of life and personal liberty:** Article 21 safeguards the right to life and personal liberty. This includes protecting the lives and personal liberties of persons with disabilities, ensuring that they are not deprived of these fundamental rights arbitrarily or without due process of law.¹⁵
5. **Protection against exploitation:** Article 23 prohibits trafficking in human beings and forced labor. Persons with disabilities are particularly vulnerable to exploitation and abuse, and this provision ensures their protection against such practices. It prohibits any form of forced labor or trafficking of persons with disabilities for exploitation.¹⁶
6. **Freedom of speech and expression:** Article 19 guarantees the right to freedom of speech and expression. This includes the right of persons with disabilities to express themselves freely, participate in public discourse, and advocate for their rights without fear of censorship or discrimination based on their disability.¹⁷

These constitutional rights lay the foundation for ensuring the dignity, equality, and inclusion of persons with disabilities in Indian society. They serve as a framework for legislation and policies aimed at promoting their full participation and integration into all aspects of life.

¹² The Constitution of India, Article 14.

¹³ The Constitution of India, Article 15.

¹⁴ The Constitution of India, Article 16.

¹⁵ The Constitution of India, Article 21.

¹⁶ The Constitution of India, Article 23.

¹⁷ The Constitution of India, Article 19.

In the Indian Constitution, the directive principles of state policy (DPSP) provide guidance to the government on framing laws and policies to achieve socio-economic justice and welfare of the people. While they are not enforceable by courts, they are fundamental in governance and policy-making. Several DPSPs indirectly protect the rights of persons with disabilities:

1. **Article 41:** This DPSP directs the state to secure the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disability. It encourages the state to ensure that opportunities for gainful employment and suitable conditions of work are available to all citizens, including persons with disabilities.¹⁸
2. **Article 45:** This article emphasizes the provision of free and compulsory education for all children until they complete the age of fourteen. While not explicitly mentioning disabilities, it implies that education should be inclusive and accessible to children with disabilities, aligning with the principles of equal opportunity and non-discrimination.¹⁹
3. **Article 46:** This DPSP promotes the educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections of society. While it doesn't explicitly mention disabilities, persons with disabilities are often among the marginalized and vulnerable groups addressed by this provision.²⁰
4. **Article 47:** This article directs the state to regard the improvement of public health as among its primary duties and to endeavor to bring about the prohibition of the consumption of intoxicating drinks and drugs that are injurious to health. This can indirectly benefit persons with disabilities by promoting public health measures that prevent disabilities and ensure access to healthcare services.²¹

While these directive principles do not directly mention disabilities, they provide a framework for the government to enact policies and laws that protect and promote the rights of persons with disabilities in India.

Along with the Constitution, some statutes also guarantee several rights to the persons with disabilities, they are-

- **The Employee's Compensation Act, 1923** is a legislation in India that provides for the payment of compensation to employees and their dependents in the case of injury or death during the course of employment. While the primary aim of the Act

¹⁸ The Constitution of India, Article 41.

¹⁹ The Constitution of India, Article 45.

²⁰ The Constitution of India, Article 46.

²¹ The Constitution of India, Article 47.

is to provide financial assistance to employees and their families in such unfortunate circumstances, it indirectly protects the rights of employees with disabilities in several ways:

1. **Compensation for workplace injuries:** If an employee sustains a disability as a result of an injury or accident at the workplace, the Act ensures that they are entitled to compensation. This compensation typically covers medical expenses, loss of wages, and in some cases, lump-sum payments for permanent disability.
2. **Rehabilitation benefits:** In addition to financial compensation, the Act may also provide for rehabilitation benefits to help employees with disabilities reintegrate into the workforce or society. This could include vocational training, assistive devices, or modifications to the workplace to accommodate their disability.
3. **Legal recourse:** The Act establishes a legal framework for employees to seek compensation in case of workplace injuries or disabilities. It allows employees or their dependents to file claims with the appropriate authorities, ensuring that their rights are protected and that they receive the compensation they are entitled to.
4. **Prevention of discrimination:** By providing compensation for workplace injuries or disabilities, the Act indirectly discourages employers from discriminating against employees with disabilities. It reinforces the principle that all employees, regardless of their physical or mental abilities, have the right to a safe working environment and fair compensation in case of injury.

- **The Rights of Persons with Disabilities Act, 2016 (RPwD Act, 2016)**

The RPwD Act of 2016 seeks to revolutionize the perception of disability, transitioning from a medicalized interpretation to a sociological perspective. It places the onus on the state to ensure that environment is universally accessible to all individuals, with a particular emphasis on catering to the needs of persons with disabilities, while also addressing the societal stigma

surrounding disability. Originally proposed by the Sudha Kaul Committee²² in 2016, the Act was introduced in the Rajya Sabha by Mr. Mallikarjun Karge, the then Minister of Social Justice, on February 7, 2013, and was subsequently enacted in 2016, superseding the Equal Opportunities Protection of Rights and Full Participation Act of 1995.

The Act incorporates numerous noteworthy features, including the identification and definition of twenty-one physical disabilities, the establishment of the right to dignity and equality for persons with disabilities, and the stipulation for state governments to formulate comprehensive disability policies. Moreover, the Act emphasizes the promotion of inclusive education, proposing the creation of a National Fund to provide financial assistance to individuals with disabilities and allocating space for stakeholders to contribute to shaping disability policies.

Additionally, the Act significantly enhances reservation quotas, increasing them from 3% to 5% in every establishment, thereby ensuring greater representation and opportunities for persons with disabilities in various sectors. It also mandates the establishment of procedures for setting up both National and State Commissions to address grievances and monitor the effective implementation of the Act.

The Act also empowers the Central Government to issue updated guidelines for the issuance of disability certificates, ensuring uniformity and fairness in the certification process. It also introduces provisions for imposing penalties on individuals or entities found guilty of offenses against persons with disabilities, with sessions courts designated for adjudicating such cases.

Moreover, the RPwD Act of 2016 introduces various other provisions aimed at fostering the comprehensive growth, development, and inclusion of persons with disabilities. These include measures to enhance accessibility in public infrastructure, provisions for accessible transportation, provisions for the empowerment and employment of persons with disabilities, and initiatives to facilitate their participation in decision-making processes at all levels of society.

IV. JUDICIAL APPROACH ON RIGHT TO DIGNITY OF DISABLED PERSONS

The rights guaranteed by the Constitution or the statutes are of no use if the judiciary is not empowered to enforce those rights for the well-being of the disabled persons. Thus, a strong judiciary can act as the guardian of the rights of the disabled. The Supreme Court of India, through the following cases have enforced the rights guaranteed to the persons with

²² MSJE, Report Sudha Kaul Committee, (June 30, 2011)

<https://disabilityaffairs.gov.in/content/upload/uploadfiles/files/Report%20Sudha%20Kaul%20Committee.pdf>

disabilities.

1. National Federation of the Blind v. Union Public Service Commission²³:

- The Supreme Court emphasized that persons with disabilities have the right to equal opportunities in education and employment, as guaranteed under Articles 14, 15, and 16 of the Indian Constitution. Denying them such opportunities would amount to a violation of their fundamental rights to equality and dignity.
- The Court highlighted the importance of providing reasonable accommodations and support systems to ensure that persons with disabilities can compete on an equal footing with others in educational institutions and workplaces.
- The judgment underscored the duty of the state to take affirmative action to eliminate discrimination against persons with disabilities and to create an inclusive society where their dignity and rights are respected and protected.

2. Rajive Raturi v. Union of India²⁴:

- The Supreme Court recognized that the accessibility of government websites and digital platforms is essential for ensuring the full participation and inclusion of persons with disabilities in the digital age.
- The Court observed that inaccessible websites and digital content deprive persons with disabilities of their right to access information and services on an equal basis with others, thus violating their dignity and rights.
- The judgment emphasized the need for the government to adopt accessibility standards and guidelines for digital content and to ensure that all government websites and online services are fully accessible to persons with disabilities.

3. Vinod Kumar Bansal v. Govt. of NCT of Delhi and Ors.²⁵:

- The Supreme Court highlighted the importance of providing barrier-free access to public transportation for persons with disabilities, in order to facilitate their mobility and independence.
- The Court observed that the lack of accessible transportation facilities prevents persons with disabilities from fully participating in social, economic, and cultural activities, thus undermining their dignity and rights.

²³ (2013) 2 SCC 772

²⁴ (2018) 2 SCC 413

²⁵ W.P.(C) 1977/2014

- The judgment emphasized the duty of the state and transportation authorities to ensure that public transportation systems are designed and operated in a manner that is accessible to persons with disabilities, including provisions for ramps, lifts, designated seating, and other accommodations.

V. CONCLUSION

The Rights of Persons with Disabilities Act (RPwD Act) and the Indian Constitution both provide strong legal foundations intended to protect and preserve the rights of people with disabilities in India. In theory, disabled people are entitled to equal opportunities and legal protection through constitutional principles including equality before the law, nondiscrimination, and the right to work and study. By defining various kinds of disabilities, introducing inclusive education measures, requiring state governments to create disability policies, and strengthening reservation quotas in employment and education, the RPwD Act, 2016 builds upon these rights. Even with these legislative protections, the courts have frequently failed to uphold fundamental rights in a fair and effective manner. Courtroom backlogs, judges' ignorance of the rights of people with disabilities, and restricted access to the legal system have hindered the realization of these rights in practice.

Although the legal system is in place to safeguard the rights of people with disabilities, the judiciary has occasionally failed to appropriately interpret and apply these statutes. There have been cases of insufficient enforcement, erratic decisions, and insensitivity to the particular difficulties experienced by people with disabilities. Implementation gaps may result from the judiciary's reliance on antiquated legal theories and practices, which may not always be in line with the growing body of knowledge regarding disability rights. The issue is further made worse by restricted court access, which disproportionately affects marginalized disability people. There is an urgent need for increased judicial understanding, sensitivity, and proactive efforts to close the gap between legislative requirements and the practical implementation of disability rights for handicapped individuals throughout India in order to truly ensure the effective enforcement of these rights.
