

# An Analytical Study of Disability Laws in India vis-à-vis UNCRPD (Disability Laws in India): A Jurisprudential Overview

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## Abstract

Disability is a complex issue which is understood and interpreted by different people in very different ways. In most of the societies, a person with physical or intellectual anomalies has been assumed to be inferior, by the very nature of his condition. Therefore, disabled people are subject to varied forms of discriminations, which infringe their human as well as fundamental rights. Indian legislature has taken steps to provide equal opportunities to persons with disabilities by enactment of laws and implementing various policies and schemes for empowerment of persons with disabilities. Indian Constitution guarantees equal rights to every citizen. India is one of the first signatories to UN Convention on the Rights of Persons with Disabilities, which gives a framework to change attitudes and approaches to persons with disabilities. Hence, the rights as well as laws of disabled persons are subject to various perspectives including human rights and other laws in India, which mitigate the gap between the abled and differently abled persons in order to attain their dignity in true sense in the society. In this research paper, the researchers attempt to lay down emphasis on various legal provisions related to the rights of disabled persons in India and make an analytical study as to how these laws contribute towards the legal status of the disabled persons in India. This research paper also tries to make a study of contribution of judiciary in shaping disability laws in India.

**Keywords:** Disability, Impairment, Social model, Medical model, Human rights model, Census, Person with disabilities, UNCRPD

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## INTRODUCTION

*“My advice to other disabled people would be, concentrate on things your disability doesn't prevent you doing well, and don't regret the things it interferes with. Don't be disabled in spirit as well as physically” [1].*

—Stephen Hawking

## WHAT DOES DISABILITY MEAN?

Disability is an incapacity or impairment which may be either physical or sensory, either cognitive or intellectual, or a combination of these impairments. These conditions affect the day-to-day activities of a person and result in reduced capacity of the person for communication, vision, mental health, movement, social interaction, etc.

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

establishes in *Article 1* that ‘persons with disabilities’ include “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hamper their complete and effective participation in society on an equal basis with others” [2].

The Declaration on the Rights of Disabled Persons described the term *disabled person* as any person 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 [3].

The World Health Organization (WHO) defines disabilities as an umbrella term, covering impairments, activity limitations, and participation restrictions.

Disability is a complex phenomenon and there are historical, social, legal, and philosophical influences on its interpretation. Better aids and services are the only way to overcome disability.

### **TYPES OF DISABILITIES**

Disability, in general, could be of various types.

**Intellectual Disability** – This generally appears in the developmental period (0–18 years) and affects mental functions like difficulties in learning and carrying on daily activities.

**Physical Disability** – This generally attributes to the physical cause. Mobility is foremost thing affected by the physical disability.

**Acquired Brain Injury** – This refers to a mental disability where an injury in the brain is acquired after birth due to stroke, accident, brain tumor, and which results in deterioration of independent functioning of the brain.

**Neurological Disability** – This refers to the nervous disability where impairments in nervous system take place after birth, which could result in epilepsy.

**Psychiatric Disability** – Psychiatric disability includes recognizable symptoms and behavior patterns, frequently associated with distress, which may impair personal functioning in normal social activity [4].

**Functioning and Disability DSS** is a multifaceted concept which goes hand-in-hand and aims to ensure national consistency in relation to defining and measuring human functioning and disability [5]. The International Classification of Functioning, Disability and Health (ICF) is the WHO framework for measuring health and disability at both individual and population levels.

Globally, disability has been an issue of paramount importance. It has been recognized internationally as a concern where an immediate solution is the only way out to curb out this problem. In the recent past, discrimination overtook equality. Persons with disabilities are subjected to violence and discrimination and their fundamental rights get

infringed. Many laws, policies, and mechanisms have been adopted in various conventions, and through declarations to deal with this menace.

### **DISABILITY – A HUMAN RIGHTS APPROACH**

#### **Why a Human Rights Approach?**

Human rights view people with ability and people with disability on the same ground. It values all life as equal from birth and values all members of the society with dignity. People with disabilities are discriminated and restricted to do all those activities which they have a right to. They are deprived of their rights to be included in the general school system, to be employed, to live independently in the community, to move freely, to vote, to participate in sports and cultural activities, to enjoy social protection, to access justice, to choose medical treatment and to enter freely into legal commitments such as buying and selling property [6]. These activities stand against the rules and laws established through various conventions and disclosures.

Article 7 of the Universal Declaration of Human Rights (UDHR) states that all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination [7]. The Declaration on Rights of Disabled Persons also grants the right of equality and right to respect for human dignity to all disabled persons without any discrimination on the basis of race, sex, language, religion, national or social origin, etc. Persons with disabilities have the fundamental rights same as other citizens.

The Convention on Rights of Persons with Disabilities (CRPD) came into existence in 2008 and is legally binding and is based on the human rights approach. This human rights-based approach insists equality for all disabled persons; therefore, the government must create programs and policies to create an inclusive and valued society for all citizens. The relationship between rights-holder and duty-bearer should be cooperative and mechanism of accountability must be adopted.

Thomas Pogge has stated, by adopting a human rights approach those who are disadvantaged will no longer be seen as “shrunk wretches begging for our help”, but rather as “persons with dignity who are claiming what is theirs by right” [8]. Philosophical and practical implications stand in line with the human rights-based approach. Persons with disabilities are considered as passive recipients of services but they need to be transformed into active participants through the human rights-based approach.

### **Which is a Better Model for an Approach?**

The medical model and social model of disability precede the human rights model. The medical model considers disability as impairment where efforts made are limited to its cure and treatment. This model views disability as a physical flaw and is confined to physical impairment. Disability is seen as a deviation from the normal health status [9]. The social model of disability has been developed as a strong tool to examine the prejudiced and oppressive structure of society. This model demands anti-discrimination legislation after disability analysis as a logical result. To use Michael Oliver’s words: Hence, disability according to the social model, is all the things that impose restrictions on disabled people; ranging from individual prejudice to institutional discrimination, from inaccessible public buildings to unusable transport systems, from segregated education to excluding work arrangements, and so on. Further, the consequences of this failure do not simply and randomly fall on individuals but systematically upon disabled people as a group who experience this failure to discrimination institutionalized throughout the society [10]. The social model does not consider impairment as a part of human diversity and neglects the quality of life.

There is a dichotomy between the terms *impairment* and *disability*. Impairment is confined to physical disability or the inappropriate condition of the body to perform which could possibly be the defect in vision, unable to hear, handicapped, etc., whereas disability not only includes physical disability but also intellectual, neurological, psychiatric,

and other forms of disability. Human rights model of disability also records the response which the environment gives towards the person with disabilities. Human rights model values impairment as a part of human diversity and human dignity [11].

The Human rights model places human dignity as a superior aspect. It values the dignity of human in the society on the same footing whether it is a downtrodden or an affluent person. This model gives the individual a center stage and deals with the problem in the society. As Lee Ann Baser has pointed out and says that if rights are trumps ‘then dignity is the key that turns the lock and allows entry into society and require that each person is treated with equal concern and respect in that society.’

Human rights model of disability showcases a struggle and a fight of persons with disability for respect and recognition in the society. Impairment and disability being dichotomous have their own interpretation in different models and different theories. The Human rights model makes it crystal clear that impairment does not detract or reduce the importance of human dignity and positions the disabled persons as rights-bearers. Thus, the human rights model or approach of disability is better over others as it brings out an appropriate approach for social and cultural recognition and helps to achieve the status of equality without any discrimination.

### **GLOBAL PREVALENCE OF DISABILITY**

The population affected with disability is considered as a marginalized and vulnerable portion of the mass worldwide. The statistics on disability speak for themselves. India in the context of disability is not a blessed country. A large portion of population is under the cover of this misfortune.

### **Dimensions of Disability in India**

In India, data on disabled persons is collected through the Decennial Population Census and through NSSO surveys. The Census 2011 used improved concepts, questions, methodology of canvassing, etc., for better collection of information on disabled persons in India. In

Census 2001, information on five types of disability was collected, while in Census 2011 data was collected for eight types of disability. As per the Census 2011:

- Out of the 121 crore population, 2.68 crore persons are 'disabled' which is 2.21% of the total population.

Population, India 2011			Disabled Persons, India 2011		
Persons	Male	Female	Persons	Male	Female
121.08 crore	62.32 crore	58.76 crore	2.68 crore	1.5 crore	1.18 crore

- Among the disabled population, 56% (1.5 crore) are males and 44% (1.18 crore) are females.
- Majority 69% of the disabled population resides in rural areas and the rest 31% resides in urban areas.
- In India, 20% of the disabled persons are having the disability in movement, 19% are with disability in seeing, and another 19% are with disability in hearing. 8% have multiple disabilities.
- The number of disabled persons is highest in the age group of 10–19 years.
- 1.24% (20.42 lakh) of the total children (0–6 years) are disabled and 61% of the disabled children (5–19 years) are attending educational institutions and the rest are not.
- Of the total disabled population, nearly 55% (1.46 crore) are literates and the rest 45% are illiterates and among which 65% men are literate and 45% females are only literate.

### Global Footprints

Around one billion people are affected with some form of disability worldwide or 15% of the total world population according to the World Health Survey.

As per WHO:

- Between 110 million (2.2%) and 190 million (3.8%) adults have significant difficulties in learning.
- The survey also demonstrated that the occurrence of disability is higher in low-income countries where about 18% of the population has a disability, in comparison to high-income countries where about 11.8% of the population has a disability [12].

## INDIAN DISABILITY LAWS IN BRIEF

### The Constitution of India and the Disabled [13]

The Indian Constitution applies equally and uniformly to every legal citizen of India, whether they are healthy or disabled in any manner (physically or mentally). Under the Constitution of India, the disabled have been guaranteed the following fundamental rights:

1. The Constitution provides for the citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity [14].
2. Article 15(1) directs the Government not to discriminate against any citizen of India (including disabled) on the ground of religion, race, caste, sex, or place of birth [15].
3. Article 15(2) provides that no citizen (including the disabled) shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access to shops, hotels and places of public entertainment, public restaurants, or in the use of wells, tanks, public bore wells, bathing ghats, roads and places of public resort maintained totally or partly by the virtue of government funds or dedicated to the use of the general public. There shall be equal opportunity for all citizens (including the disabled) in matters pertaining to employment or appointment to any office under the State [16].
4. No person (including the disabled) irrespective of their belongings can be treated or seen as an untouchable. It would amount to an offence punishable in accordance with law as provided by Article 17 of the Constitution [17].
5. Each and every person including the disabled has his life and liberty guaranteed under Article 21 of the Constitution [18].
6. There can be no trafficking in human beings (including the disabled), and beggar and any form of forced labor is prohibited and the same is made punishable in accordance with law (Article 23) [19].

7. Article 24 bans employment of children (including the disabled) below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment. Even a private contractor working for the government cannot engage children below 14 years of age in such employment [20].
8. Article 25 ensures to every citizen (including the disabled) the right to freedom of religion. Every disabled person (similar to non-disabled ones) has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health [21].
9. No disabled person can be made to pay any taxes for the promotion and maintenance of any particular religion or religious group.
10. No Disabled person will be denied the right to the language, script or culture which he has or to which he belongs.
11. Every disabled person has right to move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by Article 32 [22].
12. No disabled person owning and managing property (similar to non-disabled) can be deprived of his property except by authority of law though right to property is not a fundamental right. Any unlawful and unauthorized deprivation of property can be challenged by suit and for relief by way of damages.
13. Every disabled person (like the non-disabled) on attaining the age of 18 years becomes eligible for inclusion of his name in the general electoral roll for the territorial constituency to which he is permanent resident of.

#### **Disabled and the Educational Laws [23]**

The right to education has been provided to all citizens including the disabled. Article 29(2) of the Constitution imparts that no citizen shall be denied admission into any educational institution maintained by the State or receives aid out of State funds on the ground of religion, race, caste or language [24].

Article 45 of the Constitution enjoins the State to make available free and compulsory

education for all children (including the disabled) until they attain the age of 14 years [25]. No child can be deprived of admission into any education institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language.

#### **Disabled and the Health Laws [26]**

Article 47 of the constitution thrusts on the government a primary duty to raise the level of nutrition and standard of living of its people and make improvements in public health – particularly to bring about prohibition of the consumption and use of intoxicated drinks and drugs which are injurious to one's health except for medicinal purposes. The health laws of India give many provisions for the disabled. Many of the Acts make provision for health of the citizens including the disabled in the Mental Health Act, 1987.

#### **Disabled and the Labor Law [27]**

The rights of the disabled have not been spelt out so well and precise in the labor legislations but provisions which deal with disabled in their relationship with the employer are mainly contained in delegated legislations such as rules, regulations, and standing orders.

#### **Disabled and the Income Tax Concessions [28]**

##### ***Relief for Handicapped***

Section 80 DD: Section 80 DD calls for a deduction in respect of the expenditure incurred by an individual or Hindu Undivided Family resident in India on the medical treatment (including nursing), training, rehabilitation, etc., of handicapped dependents. For officiating the increased cost of such maintenance, the limit of the deduction has been increased from Rs.12,000/- to Rs.20,000/-.

Section 80V: A new section 80V has been added to ensure that the parent in whose hand's income of a permanently disabled minor has been clubbed under Section 64, is entitled to claim a deduction up to Rs.20,000/- in terms of Section 80V.

Section 88B: This section provides for an additional rebate or concession from the net tax payable by a resident individual who has

attained the age of 65 years. It has been changed to increase the rebate from 10% to 20% in the cases where the gross total income does not exceed Rs.75,000/- (as against a limit of Rs.50,000/- specified earlier).

### **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [29]**

“The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” came into effect on February 7, 1996. It is considered a very significant step which ensures equal opportunities for the people with disabilities and their full participation in nation building. The Act provides for both the preventive and promotional aspects of rehabilitation like education, employment and vocational training, research and manpower development, reservation, creation of barrier-free environment, rehabilitation of persons with disability, unemployment allowance for the person with disabilities, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability, etc.

Main Provisions of the Act are as follows:

#### **Prevention and Early Detection of Disabilities**

- Surveys, investigations and research shall be conducted routinely to ascertain the cause of occurrence of disabilities.
- Numerous measures should be taken to prevent disabilities. Staff of the Primary Health Centers shall be trained to assist in this work.
- All the children shall be examined once in a year for identifying ‘at-risk’ cases.
- Awareness campaigns shall be launched and sponsored to disseminate information about prevention of disability.
- Measures must be taken for pre-natal, perinatal, and post-natal care of the mother and child.

#### **Education**

- Each and every child with disability shall have the right to free education till the age of 18 years in any integrated school or special school.
- Appropriate transportation, removal of architectural barriers and restructuring of

modifications in the examination system shall be made for the benefit of children with disabilities.

- Children with disabilities shall have the right to free books, uniform, scholarships, and other learning material.
- Special schools for children with disabilities shall be well equipped with vocational training facilities.
- Casual education method shall be promoted for children with disabilities.

#### **Employment**

- 3% of vacancies in government employment shall be kept reserved for people with disabilities, 1% each for the persons suffering from:
  - Blindness/low vision, locomotor disabilities, cerebral palsy and hearing impairment
- Suitable scheme shall be formulated for:
  - The training as well as welfare of persons with disabilities, the relaxation of upper age limit, regulating the employment, Health and safety measures, and creation of a non-handicapping environment in places where persons with disabilities are employed.
- Government educational institutes and other educational institutes receiving grant out of government funds shall reserve at least 3% seats for people with disabilities.

#### **Non-Discrimination**

- Public buildings, rail compartments, buses, air craft and ships will be designed to give easy access to the people with disabilities.
- In all public places and in waiting rooms, the toilets shall be made wheel-chair accessible. Braille and sound symbols are also to be given in all elevators (lifts).
- All the places of public utility shall be created barrier-free by providing the ramps.

#### **Social Security**

- Financial assistance to NGOs for the rehabilitation of persons with disabilities.
- Insurance coverage shall be provided for the benefit of the government employees with disabilities.
- Unemployment allowance to the people with disabilities who are registered with

the special employment exchange for more than a year and could not find any profitable occupation.

### Grievance Redressal

- In case of infringement of the rights as prescribed in this Act, people with disabilities may move an application to the:
- Chief Commissioner (in the center) for Persons with Disabilities, or
- Commissioner (in the state) for Persons with Disabilities.

### The National Thrust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, 1999 [30]

1. The central government has the obligation to establish, in consonance with this Act and for the purpose of the benefit of the disabled, the National Trust for Welfare of Persons with Autism, Mental Retardation, Cerebral Palsy and Multiple Disability at New Delhi.
2. The National Trust created by the central government has to ensure that the objects for which it has been established as enshrined in Section 10 of this Act have to be fulfilled.
3. It is a duty imposed on part of the Board of Trustees of the National Trust to make arrangements for an adequate standard of living for any beneficiary named in any request received by it, and to ensure financial assistance to the registered organizations for carrying out any approved program for the benefit of disabled.
4. Disabled persons have been provided the right to be placed under guardianship appointed by the 'Local Level Committees' in accordance with the provisions of the Act. The guardians so appointed will have the duty to be responsible for the disabled person and their property and required to be accountable for the same.
5. A disabled person has the right to have his guardian sacked under certain conditions. These include an abuse or neglect of the disabled person, as well as neglect or misappropriation of the property under care.

6. Whenever the Board of Trustees are not able to perform or have constantly made default in their performance of duties, a registered organization for the disabled can file complain to the central government to have the Board of Trustees either superseded or reconstituted or both.
7. The National Trust shall be obligated by the provisions of this Act regarding its accountability, monitoring finance, accounts and audit.

### JUDICIARY AND THE DISABLED

The Indian judicial system has played a very important and crucial role in developing the human rights of the disabled persons. In plethora of cases the Supreme Court and the High Courts interpreted the disability legislations furthering the objectives contained therein. The tremendous powers vested in the Supreme Court under Articles 32 and 142, and the High Courts under Article 226 of the Constitution of India, have ensured that the rights of the citizens, and more specifically, those of the disabled citizens, are not infringed and trampled upon.

In *Javed Abidi v. Union of India* [31], while directing Indian Airlines to provide concessions for passengers suffering from locomotor disability, the Supreme Court keeping in view the object of the Persons with Disabilities Act, 1995, enabled creation of various free environments for persons with disabilities and making special provisions for their rehabilitation, medical care, education, employment, training, and protection of their rights.

In *D.N. Chanchala v. State* [32], the Supreme Court advocating the right-based approach to disability extended the equitable principle of preferential treatment under Art 15 (4) to persons with disabilities to bring them to the lame stream of the society by giving them equal opportunity in the field of education. The Allahabad High Court in the case of *National Federation of Blinds UP Branch v. State of UP* [33], ordered the Lucknow Development Authority not only to give preference in the matter of allotment of land houses to handicapped persons, but also to provide concessional rates to them.

In *Chandan Kumar Banik v. State of West Bengal* [34] the Supreme Court emancipated mentally challenged inmates of a hospital in Hooghly District who were being kept chained by the hospital administration to control their unruly and violent behavior. Absence of reservations for persons with a physical handicap in medical colleges was found by the Calcutta High Court to be an infringement of Persons with Disabilities Act and the Constitution as well in *Dy. Secy. (Mart), Deptt. of Health and Family Welfare v. Sanchita Biswas* [35]. This view of the Calcutta High Court traces support in a flurry of judgments [*Raman Khanna v. University of Delhi*, (2003) 106 DLT 97 [36]; *Vijay Kumar Aggarwal v. State of Rajasthan*, CWP No. 1239 of 2000 [37]; *A.P. Federation of the Blind v. Registrar, Andhra University*, WP No.10234 of 1999 [38]; *Benny v. State of Kerala*, WA No. 3660 [39], etc.] pronounced by different High Courts of the country. In *Sheela Barse v. Union of India* [40], the Supreme Court held that mentally ill non-criminal persons cannot be kept in jail and opined that keeping the non-criminals in jail along with other convicts is unconstitutional. Like this in a number of cases, the Indian judiciary has shown its commitment towards the protection of the human rights of the disabled persons and played a significant role in the domain of disability rights in India.

## CONCLUSION AND SUGGESTIONS

India has adopted a very straight forward approach in dealing with the issue of disability as it was one of the first signatories of UN CRPD. Moreover, the constitutional and legal regime in India does provide a very favorable and suitable climate and opportunity for implementing the UN CRPD. The FRs and the DPSPs enshrined in the Constitution of India apply in equal measure to persons with disabilities as well. Article 41 of the Indian Constitution which forms part of the directive principles of State policies explicitly mentions “disablement” as a condition for which the State is to strive, to provide assistance in certain matters including education, work, employment, etc.

Along with it, there exist four disability-specific legislations in the country, such as

Persons with Disabilities (equal opportunities, protection of rights and full participation) Act, 1995; National Trust for the Welfare of Persons with Autism, Cerebella Policy, Mental Retardation and Disabilities Act, 1999; Rehabilitation Council of India Act, 1993; and Indian Mental Health Act, 1997. Both the central as well as various state governments are actively involved in implementing various schemes and progress for the benefit of Persons with disabilities

But, the issue of disability is not confined to the problems that a person with disabilities faces in his everyday life but inevitably it is also related to various other social, economic and political issues including those of extreme poverty, gender inequality, mal-administration and political victimization. All these issues must be dealt with firmly to make the disability right a reality. This also requires proactive role of disabled people in planning and policy making process in order to full recognition of their rights.

Most importantly, a huge number of persons with disabilities live in rural India. They live in a state of utter dis-empowerment and their literacy levels are very low. Hence, the most significant challenge lies in educating these primary stakeholders about the Convention so that they can initiate for their rights both with the State as well as with the civil society on the thrust of this legally binding international treaty.

It goes without saying that India is filled with complex diversities and diverse complexities. India is a multi-lingual, multi-cultural and multi-ethnic nation. People in India, hence, speak a large number of languages and dialects with the result that carrying the message of the Convention to this diverse category of this citizenry is both a challenge and a hindrance due to vastness of the task; it is hindrance owing to the any number of factors such as resource crunch, poverty, abject poverty, illiteracy, etc. Aiming various stakeholders critical to the implementation of this Convention, such as, the media persons, bureaucracy, etc. is also a burdensome challenge given the size and diversity of the country.

It is suggested that government needs to introduce more security schemes for disabled sections of the society and generate more employment opportunities for persons with disabilities. It is required that several schemes and benefit conferences on the disabled persons has to be organized, making them aware of their rights and certain beneficiary schemes of the government.

In addition to access to all basic rights, as a human disabled persons need a safe, secure, convenient, beneficial and accessible environment which is respectful of their human dignity. It is required to change our own attitude, thinking and mind-set and the society as a whole since; it is the state of mind of the society which is responsible for the disregard and misery of the persons with disability. We should contribute to implement all the laws and policies made for the persons with disabilities in true sense to uplift their lives and status. Let's make a habit to take care for all human beings as human beings, with due respect, irrespective of their differences and help them participate in the mainstream of the society.

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**Cite this Article**

Ravi Prakash, Aman Gupta. An Analytical Study of Disability Laws in India vis-à-vis UNCRPD (Disability Laws in India): A Jurisprudential Overview. *Journal of Constitutional Law and Jurisprudence*. 2018; 1(2): 21–30p.