



## RIGHTS OF PERSONS WITH DISABILITY: LEGISLATIVE AND JUDICIAL ANALYSIS

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### ABSTRACT

*This article provides a multidimensional exploration of disability through international, national, legal, and constitutional lenses. It begins with diverse definitions from leading authorities, including the World Health Organisation (WHO), the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and Indian judicial pronouncements, highlighting the evolution of disability from a purely medical model to a social and rights-based framework. The article then delves into the UNCRPD, tracing its historical development, principles, and core provisions that safeguard the rights of persons with disabilities (PwDs) globally. A comparative analysis of legal frameworks in countries such as the United Kingdom, the United States, Canada, and Australia showcases the global commitment to eliminating disability-based discrimination. The Indian legal framework is examined in detail, including relevant constitutional provisions such as Articles 14, 16, 21, and 21A, which guarantee equality, dignity, education, and employment opportunities for PwDs. The analysis further covers statutory developments, notably the transition from the Persons with Disabilities Act, 1995, to the more inclusive and rights-oriented Rights of Persons with Disabilities (RPwD) Act, 2016. Key judicial decisions reinforcing the legal rights of disabled persons are discussed alongside government schemes like the Indira Gandhi National Disability Pension Scheme, DDRS, and the Swavlamban Health Insurance Scheme. The authors examine the multifaceted dimensions of disability through global and Indian perspectives—covering definitions, legal frameworks, constitutional provisions, judicial interpretations, and welfare initiatives. It aims to highlight the need for an inclusive, equitable society that upholds the dignity and rights of all individuals, regardless of their abilities. The article concludes by emphasising the need for*

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*continued legal reform, inclusive policymaking, and societal sensitisation to uphold the dignity and rights of persons with disabilities.*

**Keywords:** Persons With Disability, United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Equality and Dignity.

## INTRODUCTION

Disability, as a concept, transcends medical diagnosis and enters the realms of human rights, social justice, and inclusive development. It is not merely a limitation of physical or mental function but a complex interaction between individual impairments and the barriers created by societal structures, attitudes, and environments. Recognising this, global and national frameworks have progressively shifted from a charity-based approach to a rights-based paradigm that affirms the dignity and equality of persons with disabilities (PwDs). The aim is to underscore the importance of a holistic and inclusive approach that enables persons with disabilities to live with autonomy, equality, and dignity.

Disabled persons are individuals with unique abilities, perspectives, and strengths who contribute meaningfully to every aspect of society. They embody resilience, determination, and courage in the face of challenges created not by their impairments but by societal barriers and attitudes. Rather than being defined by their limitations, they are defined by their talents, aspirations, and the dignity they bring to their lives and the communities around them. They are change-makers, leaders, artists, innovators, educators, and professionals who enrich the world with their insights and experiences. With the right support, accessibility, and inclusion, disabled persons can thrive equally and independently—just like anyone else. Their presence reminds us that diversity is a strength, and that inclusion is a right, not a favour.

Disability is not merely a physical or mental condition—it is a social construct shaped by the way societies design environments, structure systems, and form attitudes. However, modern perspectives, led by international frameworks like the UN Convention on the Rights of Persons with Disabilities (UNCRPD), emphasise that disability results from the interaction between people with impairments and societal barriers that hinder their full and equal participation.

In response to this global shift, India has taken significant legislative and constitutional strides to protect the rights of persons with disabilities (PwDs). The transition from the limited scope of the Persons with Disabilities Act, 1995, to the more progressive Rights of Persons with

Disabilities Act, 2016, marked a fundamental change in the way disability is understood and addressed in the country.

## WHAT IS DISABILITY?

Disability, a multifaceted term encompassing a plethora of complex phenomena of malfunctioning or dysfunction of features of a person's body, is defined by WHO - as 'an umbrella term covering impairments, activity limitations, and participation restrictions, where an impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations'.<sup>1</sup> The Directorate of Welfare of Disabled and Senior Citizens defines disability as 'lack of normal functioning of physical, mental or psychological processes'.<sup>2</sup>

The United Nations Convention on the Rights of Persons with Disabilities (the Disability Convention), in its Article 1 sets out the definition of disabled people as "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."<sup>3</sup> It is also described as learning difficulties or difficulties in adjusting socially, which interfere with a person's normal growth and development.

In the case of **Chuneela Kumari v. Karunashankar Trivedi**,<sup>4</sup> it was held that disability is a force which tends to reduce or impair the functional capacity of a person.

In the case of **Rasala Gopal v. Andhra Bank**,<sup>5</sup> it was held that "it is only when the disability or deficiency is to such an extent as would differentiate the person from others with ordinary faculties, that he can be treated as physically disabled. If every minute deficiency as to functioning of the sense organs is to be treated as a physical disability, a situation would arise wherein the exception would eat away the rule".

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<sup>1</sup> <https://www.afro.who.int/node/5564> accessed on 2 July 2025.

<sup>2</sup> Disability Act, 1995.

<sup>3</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> accessed on 2 July 2025.

<sup>4</sup> 1986 SCC OnLine MP 19: AIR 1988 MP 232.

<sup>5</sup> 2003-II-LLJ 916.

In **Disabled Right Group v. Union of India**,<sup>6</sup> the Supreme Court's Two-bench Judge defined the term "disability" under the Rights of Persons with Disabilities Act, 2016. A disability is only truly a disability if it prevents a person from carrying out necessary or desirable activities.

### **THE CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES (CRPD)**

The UN Headquarters in New York City ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106) on December 13, 2006, and it was made accessible for signature on March 30, 2007. The treaty, which had 82 signatories, and the Optional Protocol, which had 44, were both ratified once. On its first day, the UN treaty received the most signatories in history. The first comprehensive human rights agreement of the twenty-first century and the first human rights treaty that allows regional integration organisations to join are both represented in it.<sup>7</sup>

On May 3, 2008, the Convention became law. The convention is managed by the United Nations, which has been working hard for decades to shift public perception and comprehension of persons with disabilities. The movement elevates the perception of people with disabilities from being "objects" of charity, medical care, and social protection to being "subjects" with rights who can use those rights, make decisions about their lives based on their free and informed consent, and participate in society.

The Convention is designed to be a tool for human rights, with a significant component of social development. It acknowledges the diversity of disabilities that individuals with disabilities encounter and argues that everyone should have access to all essential rights and freedoms, regardless of the kind of impairment. It draws attention to places where the rights of people with disabilities have been infringed upon, where changes are necessary to allow them to fully utilise those rights, and where those rights need more protection. Furthermore, it clarifies how each right applies to people with disabilities.

The Convention was negotiated between 2002 and 2006 in eight sessions of an Ad Hoc Committee of the General Assembly, making it the quickest human rights treaty ever established. Terms: Regulations Governing the Constitution, Fourteenth article. Equal

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<sup>6</sup> WP (C) No. 292 of 2006.

<sup>7</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.accessed on 4 July 2025.

treatment under the law within the borders of India, the State is prohibited from denying anyone equality before the law or equal protection under the law.

**Important Provisions:**

- Article 2 – Definition
- Article 3 – General Principles
- Article 4 - General Obligation
- Article 5 – Equality and non-discrimination
- Article 6 – Women with disabilities
- Article 7 – Children with disabilities
- Article 9 – Accessibility
- Article 10 – Right to life
- Article 12 – Equal recognition before the law
- Article 13 – Access to justice
- Article 14 – Liberty and security of the person
- Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment
- Article 16 – Freedom from exploitation, violence and abuse
- Article 17 – Protecting the integrity of the person
- Article 18 – Liberty of movement and nationality
- Article 19 – Living independently and being included in the community
- Article 20 – Personal mobility
- Article 21 – Freedom of expression and opinion, and access to information
- Article 22 – Respect for privacy
- Article 23 – Respect for home and the family
- Article 24 – Education
- Article 25 – Health
- Article 26 – Habilitation and rehabilitation
- Article 27 – Work and employment
- Article 28 – Adequate standard of living and social protection
- Article 29 – Participation in political and public life

- Article 30 – Participation in cultural life, recreation, leisure and sport.<sup>8</sup>

The purpose of the Convention 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.<sup>9</sup> The Convention outlines pragmatic provisions to facilitate the needs of disabled persons. It is axiomatic from the above articles that it includes or covers the catalyst rights of the concerned persons, to accommodate the help or aid. The disabled are part of society and should enjoy the rights inter se with other human beings.

## INTERNATIONAL SCENARIO

**The United Kingdom:** The Disability Discrimination Act (DDA) of 1995 is the most recent piece of legislation in the United Kingdom. The DDA prohibits discrimination against persons with disabilities in the provision of goods, services, and amenities, as well as in the administration and disposal of properties.<sup>10</sup>

**United States of America:** The stated primary goal of the Americans with Disability Act of 1990 (ADA) is "to provide a clear and comprehensive mandate for the elimination of discrimination against individuals with disabilities."<sup>11</sup>

**Canada:** The Canadian Human Rights Act of 1985 forbids certain discriminatory behaviours and outlines several justifications for why discrimination is against the law. Disability is one of the grounds for discrimination that is not permitted. "Disability" encompasses "any previous or existing mental or physical impairment and includes disfigurement and previous or existing dependence on alcohol or a drug."<sup>12</sup>

**Australia:** The goal of the Disability Discrimination Act of 1992 is to eliminate discrimination based on disability in all aspects of life, including work. The Act acknowledges the notion that

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<sup>8</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> accessed on 6 July 2025

<sup>9</sup> [https://hpod.law.harvard.edu/pdf/RatifyNowUNCRPD\\_factsheet.pdf](https://hpod.law.harvard.edu/pdf/RatifyNowUNCRPD_factsheet.pdf) accessed on 6 July 2025

<sup>10</sup> Brian Doyle, "Disabled Workers Rights, the Disability Discrimination Act and the U.N. Standard Rules" 25 Ind LJ 1-14 (1996).

<sup>11</sup> The Americans with Disabilities Act, 1990 (ADA) 42 U.S.C.S. 12101

<sup>12</sup> Canadian Human Rights Act, 1985.

people with disabilities have the same fundamental rights as everyone else in society and applies throughout Australia, including employment in the commercial and public sectors.<sup>13</sup>

## INDIAN SCENARIO

### Constitution of India, 1950

**Article 14 - Equality before Law:** The Indian Constitution safeguards individuals with disabilities by guaranteeing equality before the law and equal protection of the laws, guaranteeing that they are treated equally and not discriminated against. This implies that everyone, including those with disabilities, should be treated equally under the law and that fair accommodations should be made to guarantee their equal participation in society.<sup>14</sup>

### Article 16 - Equality of opportunity in matters of public employment

1. All citizens should have the same opportunity to apply for jobs or positions in any government body.
2. No individual may be excluded from or subjected to unjust treatment in any employment or position under the State based on religion, race, caste, gender, ethnicity, birthplace, residence, or any combination of these.
3. Notwithstanding the content of this article, the Parliament has the authority to mandate any residency requirement for any class or category of employment or appointment to a position under the government of any State or Union territory, or any local or other authority within that State or Union territory.
4. This legislation should not prevent the State from setting aside positions or employment for any disadvantaged population that the State believes is underrepresented in the services it provides.

4A. The State is not prohibited by anything in this piece from creating any reservation for the Scheduled Castes and the Scheduled Tribes in any class or classes of posts in the services under the State that the State deems to be underrepresented in the services under the State, including reservation 3 [in matters of promotion, with consequential seniority, to any class].

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<sup>13</sup> Disability Discrimination Act, 1992.

<sup>14</sup> Art. 14, The Constitution of India, Bare Act 2022, Professional Book Publishers.

4B. The State may treat any open positions of a year that are set aside for filling in that year as a separate class of vacancies to be filled in any future year or years, as per any reservation provision made under clauses (4) or (4A). This sort of vacancy shouldn't be taken into account along with the vacancies of the year in which it's being filled when calculating the 50% reservation cap on the total number of vacancies for that year.

4B. No provision of this article may interfere with the enforcement of any law requiring that the holder of a position related to the affairs of any religious or denominational organisation or any member of its governing board must practice a particular religion or belong to a particular denomination.

Article 16 of the Indian Constitution, which ensures equality of opportunity in government jobs, is essential for persons with disabilities (PwDs). Public employment prohibits discrimination against persons with disabilities and permits quotas to ensure fair representation. The government is authorised under Article 16(4) to establish reservations for marginalised communities, such as those with disabilities.<sup>15</sup>

**Article 21: Right to Life and Personal Liberty:** Safeguarding one's life and freedom: Unless by law, no one may be deprived of their life or liberty. The rights of Persons with Disabilities (PwDs) are also covered by Article 21 of the Indian Constitution, which protects the right to life and personal freedom. This includes the right to non-discrimination, the right to use public areas, and the right to digital access. The Supreme Court has ruled that accessibility is a constitutional necessity for individuals with disabilities due to its consequences for their rights to life, dignity, and freedom of movement.<sup>16</sup>

**Article 21A: Right to education:** Article 21A of the Indian Constitution, guaranteeing the right to free and compulsory education for children aged 6-14, is intrinsically linked to the Rights of Persons with Disabilities (RPwD) Act, 2016. While Article 21A focuses on universal elementary education, the RPwD Act ensures that children with disabilities receive inclusive education and have access to all educational opportunities, including those related to sports and recreation, with necessary accommodations and support.

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<sup>15</sup> Art 16, The Constitution of India, Bare Act 2022, Professional Book Publishers.

<sup>16</sup> Art 16, The Constitution of India, Bare Act 2022, Professional Book Publishers.



**Article 39A: Equal justice and free legal aid:** This article mandates the state to provide free legal aid to ensure justice is not denied to any citizen due to economic or other disabilities.

**Article 41: Right to work, to education and public assistance in certain cases:** Article 41 of the Indian Constitution, which addresses the right to work, education, and public assistance, is relevant to the Rights of Persons with Disabilities (RPwD) Act, 2016. While Article 41 is a general directive principle, the RPwD Act provides specific provisions and mechanisms to ensure these rights are realised for persons with disabilities.

**Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health:** Article 47's emphasis on public health and well-being complements the RPwD Act by highlighting the state's responsibility to ensure a decent standard of living for all citizens, including those with disabilities.

**Article 253: Legislation that gives effect to International Treaties:** Parliament may enact any legislation for any or all of India's territory, regardless of anything else in the previous sections of this chapter, to put into effect any treaty, agreement, or convention with any other country or countries, or any decision made at any international conference, association, or other organisation. This piece states that the Parliament has the power to enact international agreements, treaties, conventions, and decisions issued at international conferences or organisations, even if they deal with topics on the state list and concurrent list.

**Article 254. Disagreement between Laws enacted by the National Legislature and State Legislatures:** A state's legislative enactments are null and void if they contravene any legislation that Parliament has the power to pass or any existing law that falls under one of the topics covered by the Concurrent List, subject to the limitations of clause (2). The statute passed by Parliament will take precedence over the law enacted by the state legislature, regardless of whether it was made before or after it, or, as the case may be, over the existing legislation.

A law approved by a State's legislature on any of the topics on the Concurrent List shall have precedence in that State if it conflicts with any clause of a previous law passed by Parliament or an existing law on that topic, as long as it has been reserved for the President's consideration and has received his approval: Nonetheless, Parliament shall retain the authority to legislate at

any moment on the same subject matter, including laws that amend, change, supplement, or repeal the laws enacted by the State Legislature.<sup>17</sup>

## **SCHEDULE VII OF THE INDIAN CONSTITUTION**

### **List I: Union List**

10. Anything related to foreign policy or the Union's ties with other nations.
12. United Nations Organisation
13. Participating in and carrying out decisions made in international forums, bodies, and meetings.
14. Implementing treaties, agreements, and conventions signed with other nations.

### **LIST II: STATE LIST**

6. Hospitals, dispensaries, public hygiene, and public health.
9. Assistance for people who are physically impaired or unable to work.

### **LIST III: CONCURRENT LIST**

16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mentally deficient.
20. Economic and social planning
23. Social security and social insurance; employment and unemployment.
25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.<sup>18</sup>

## **AUTHORITIES CONCERNED**

The Primary authorities concerned with PwD in India are the Department of Empowerment of Persons with Disabilities (DEPwD) under the Ministry of Social Justice and Empowerment

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<sup>17</sup> The Constitution of India, Bare Act 2022, Professional Book Publishers.

<sup>18</sup> Schedule 7 of the Indian Constitution, 1950- <https://www.mea.gov.in/images/pdf1/S7.pdf> - Accessed on 6 July 2025.

and the Chief Commissioner for Persons with Disabilities (CCPD). The Woman and Child Development and Empowerment of Differently Abled and Senior Citizens Secretariat.

## LEGISLATIVE FRAMEWORK IN INDIA

The movement of disability rights in India dates back to the early 1970s, when people led campaigns for the welfare of the disabled, which ultimately went unanswered. In the 1980s, many organisations represented the interests of disabled persons, including NGOs. Various petitions and protests demanded legislation for disabled persons. The Government of India enacted or stipulated the **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**. This Act suffered from lacunae for not addressing the rights or grievances of the targeted set of people, i.e., the disabled. Only a selected category of disabilities was mentioned in this Act.

The lawsuit of **Siddharaju v. State of Karnataka**:<sup>19</sup> “The Supreme Court reaffirmed Ss. 2(i), 2(t), 32, and 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995, in conjunction with Articles. 14 and 16 of the Constitution when it came to identifying locations for reservations for people with disabilities. In a letter outlining the reasons, the Executive Engineer's internal committee decided it was not feasible to set aside the aforementioned position in favour of PWD. The argument that only an expert committee could carry out such an act in line with the notice was one of the justifications given. Dt. The appellant was given the right to contest the conclusions of the Internal Committees on May 31, 2001.”

In circa 2006, the International Convention on Rights of Persons with Disability was adopted by the United States, and India, being a signatory to the Convention, implemented the **Rights of Persons with Disability (RPWD) Act, 2016**, which replaced the earlier prevalent law of 1995. This Act comprises 21 wide categories of disabilities and Benchmark Disability, which is not a part of the earlier Act.

### Preamble of the 2016 Act:

An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

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<sup>19</sup> (2020) 19 SCC 572; 2020 SCC Online SC 45; (2020) 165 FLR 969; (2020) 1 KLT 698.

WHEREAS the United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006;

AND WHEREAS the aforesaid Convention lays down the following principles for empowerment of persons with disabilities, —

- a) respect for inherent dignity, individual autonomy, including the freedom to make one's own choices, and independence of persons;
- b) non-discrimination;
- c) full and effective participation and inclusion in society;
- d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) equality of opportunity;
- f) accessibility;
- g) equality between men and women;
- h) respect for the evolving capacities of children with disabilities and respect for

the right of children with disabilities to preserve their identities;<sup>20</sup>

The groundbreaking ruling of **Union of India v. Devendra Kumar Pant**:<sup>21</sup> Held that if the disability is likely to affect the maintenance of safety and security norms, or efficiency, then the stipulation of standards for maintaining such safety, security and efficiency will not be considered as denying a person with disability promotion, merely on the ground of his disability.<sup>22</sup>

This marked the first time that the minimum medical standards necessary for disability were addressed, and the oppressed community saw the need for a new law.

Following the passage of the new RPWD Act of 2016, similar petitions began to be submitted, such as **Purswani Ashutosh v. Union of India**,<sup>23</sup> The case concerns the application of the Rights of Persons with Disabilities Act, 2016, specifically in the context of medical education and admissions, which dealt with similar issues as those that failed to meet the

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<sup>20</sup> <https://cdnbbsr.s3waas.gov.in/s36ee69d3769e832ec77c9584e0b7ba112/uploads/2025/03/202503251422104079.pdf>

<sup>21</sup> (2009) 14 SCC 546

<sup>22</sup> <https://indiankanoon.org/doc/1988800/>

<sup>23</sup> (2019) 14 SCC 422

minimum standard and, as a result, were denied access to their rights as persons with disabilities.

### **Reason for enactment of the RPWD Act, 2016:**

#### Recognition of other types of disabilities

- Mental disability is also recognised as a disability under Schedule 1
- Person with benchmark disability as under Section 2 (r)
- A person with disability with high support needs as under section 2(t)
- A variety of disabilities are covered under the umbrella of the RPWD Act, 2016. 21 kinds of disabilities, including cerebral palsy, muscular dystrophy, autism spectrum disorder, specific learning disabilities, and chronic neurological conditions.
- Visual Impairment; Blindness; Low Vision; Hearing Impairment; Deaf; Hard of Hearing; Speech and Language Disability; Intellectual Disability; Specific Learning Disabilities; Autism Spectrum Disorder; Mental Behaviour (Mental Illness); Disability caused due to-Chronic Neurological Conditions such as (Multiple Sclerosis, Parkinson's Disease, Blood Disorder, Haemophilia, Thalassemia); Sickle Cell Disease; Multiple Disabilities; Persons with "benchmark disabilities" are defined as those certified to have at least 40 per cent of the disabilities specified above.

### **Importance of the RPWD Act, 2016:**

- Protection of transgender individuals with mental and physical disabilities
- Special provision for senior citizens, infants
- Provision for the State, Central and District authorities to reach rural, remote and tribal regions
- The intention behind the enactment of the Rights of Persons with Disabilities Act, 2016, is to make certain that all persons with disabilities can lead their lives with dignity, without discrimination, and with equal opportunities.
- It mandates that government buildings and public spaces be made accessible.
- Social Inclusion: The Act promotes the social inclusion of persons with disabilities by providing opportunities for skill development, employment, and participation in community activities.

**Salient features and main provisions of the Act:**

The RPWD Act, 2016 consists of XVII Chapters-<sup>24</sup>

**Section 2. Definitions.** — Important definitions under section 2 of the Act: caregiver, person with disability, person with disability having high support needs and transportation systems.

**Section 51** - The State Government prescribes the form and manner for applying for a certificate of registration.

**OTHER ACTS**

**The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999:** The Act that was enacted to address the disabilities mentioned in its very title, along with multiple and severe mental and physical disabilities, with the primary support of the welfare trust under section 2(p) of the above Act.

**Rehabilitation Council of India Act:** Enacted for the incorporation of the Rehabilitation Council of India, monitoring its activities, thereby ensuring the well-being of the mentally retarded persons requiring rehabilitation. The Act also aims at improving the skills and education of the professionals involved in the purposes of this Act.

**Mental Healthcare Act, 2017:** The Mental Healthcare Act, 2017, is a landmark Indian legislation that aims to provide comprehensive mental healthcare and services for individuals with mental illness, while also protecting their rights. It shifts the focus from institutionalisation to community-based care and emphasises the rights of individuals with mental illness to make decisions about their treatment.

**Preamble of the 2017 Act:** An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto. WHEREAS the Convention on Rights of Persons with Disabilities and its Optional Protocol was adopted on the 13th December 2006 at United Nations Headquarters in New York and came into force on the 3rd May 2008.<sup>25</sup>

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<sup>24</sup> The Right of Persons with Disabilities Act, 2016 (ACT NO. 49 OF 2016).

<sup>25</sup> <https://www.indiacode.nic.in/bitstream/123456789/2249/1/A2017-10.pdf>

**State of Maharashtra:**<sup>26</sup> The three-bench judge of the Supreme Court interpreted Article 21 of the Indian Constitution and Section 20(1) of the Mental Healthcare Act of 2017. Furthermore, because of this status of accused X, the State is obligated to act as *parens patriae* for prisoners and jails. The purpose of the law was to ensure that everyone who needs mental health care, including jail inmates, has access to it. Section 103 of the 2017 Act mandates that the State Governments create a mental health facility in the medical area of at least one prison in each State and Union Territory, to which prisoners with mental illness may be routinely referred for care.

### **STATE RULES CONCERNING THE RPWD ACT, 2016**

The persons with Disability rules extend to the entire country, so all the states have similar provisions under the State rules framed as empowered under section 70 of the RPWD Act, 2016. The Rights of Persons with Disabilities Rules, 2017, extend to the whole of India. This means that these rules apply to all states and union territories of India, not just specific ones. The state of Karnataka, Telangana, Uttar Pradesh, Andhra Pradesh, Gujarat, other states and Union Territories of India have enacted their own state rules for effective implementation of the Act, as required by Section 101 of the RPWD Act, 2016.<sup>27</sup>

The Rule consists of a total of XI Chapters, where the various criteria and authorities about persons with disability and the procedure to obtain their respective rights and entitlements. The main provisions of the rule are as follows:

#### **Rights And Entitlements –**

**Rule 3:** Steps taken by the Government authorities or private establishments on receiving a complaint on the grounds of disability. The government officers, such as the Chief Commissioner, State Commissioner and District Commissioner of Persons with Disability, are to address the problems regarding the grounds of disability and the timely disposal of the complaints.

**Rule 6:** Limited guardianship: The designated authority grants limited guardianship to suitable persons of persons with disability who are not in a position to make legally binding decisions in their capacity. Rule 6, sub-rule 5 states the persons to whom such a guardianship can be

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<sup>26</sup> (2019) 7 SCC 1: AIR 2019 SC 3031.

<sup>27</sup> Notification No. WCD 209 PHP 2017 (Part-2).

entrusted, such as: Parents, adult children. Immediate brother or sister, blood relatives or trustworthy caregivers and prominent personalities possessing the capability to protect the rights and interests of such persons.

## **EDUCATION**

The nodal Officer in the District Education Office shall ensure the grant of sufficient educational facilities about:

- recognition of applications,
- scholarship to students,
- availability of Special Teachers in sufficient numbers

## **VACANCIES FOR PERSONS WITH BENCHMARK DISABILITIES**

Suitable reservation and accommodation policies for such persons are provided by the Secretary to the State from the state Committee under rule 2.

## **EMPLOYMENT**

Equal opportunity for employment as per capability for each establishment is to be provided. Articles 14 and 16 of the Hon'ble Constitution of India also protect the rights to equal opportunity in this regard.

## **CERTIFICATION OF SPECIFIED DISABILITIES**

**Rule 15:** Issue of Certificate of Disability: The certificate is issued by the designated authority based on the degree of disability upon fulfilment of the application under Form V, VI or VII, according to the specific kind of mental or physical disability.

## **STATE ADVISORY BOARD**

Conducts meetings for carrying out the functions of the act and the rules, and takes decisions accordingly

**Sub Rule 28:** District Level Committee: As formed under section 72 of the act, it consists of the district deputy commissioner as the chairperson, along with the district Health and Family



Welfare officer, the District superintendent of police, the district surgeon and other similar officers to aid in the performance of functions at the district level as laid in sub-rule 29.

### **STATE FUND FOR PERSONS WITH DISABILITY**

Grants, gifts, donations, bequests, etc., are utilised for financial assistance in the schemes provided by the state, administrative and other expenses. The budget and annual report of the fund, as under sub rules 43 and 44, are made and submitted to the state government for supervision and analysis.

**Purpose of rules:** The above rules have been formulated by the state government according to powers conferred by section 101 of the RPWD Act 2016. The main purpose of the rules is to support the specific requirements of the person with disability and protect their rights sensitively and holistically.

The provision for forms with a specific form number under specific rules of the State Laws, persons with disabilities or their guardians are provided to apply for:

- Certificate of disability
- Confirmation of the appointment of a limited guardian
- Attaining facilities and standards for the grant of a certificate of registration/renewal
- To attain intimation of rejection for the certificate of disability.

### **State Legislations under the RPWD Act, 2016:**

- Karnataka State Right of Persons with Disabilities Rules, 2019.
- Andhra Pradesh Rights of Persons with Disabilities Rules, 2023.
- Uttar Pradesh Rights of Persons with Disabilities Rules 2017.
- Tamil Nadu Rights of Persons with Disabilities Rules 2018.
- Rajasthan Rights of Persons with Disabilities Rules 2018.
- Maharashtra State Rights of Persons with Disabilities Rules, 2024.
- West Bengal Rights of Persons with Disabilities Rules 2018.
- Telangana State Rights of Persons with Disabilities Rules, 2018.

The above rules have been formulated by the state government according to powers conferred by section 101 of the RPWD Act 2016. The main purpose of the rules is to support the specific requirements of the person with disability and protect their rights sensitively and holistically.

The Rights of Persons with Disabilities (Amendment) Rules, 2023, represent a significant step towards creating a more inclusive and accessible environment for persons with disabilities in India, aligning with the principles of the UN Convention on the Rights of Persons with Disabilities.

## **SCHEMES FOR PERSONS WITH DISABILITIES**

These initiatives address multiple aspects - mobility, healthcare, education, and employment—allowing individuals to lead a dignified and independent life.

**Indira Gandhi National Disability Pension Scheme (IGNDPS):** Eligible individuals receive financial assistance of up to ₹300 per month from the central government, which may be supplemented by state governments.

**Deendayal Disabled Rehabilitation Scheme (DDRS):** Under this programme, persons with disabilities can benefit from services such as vocational training, special schools, and community-based rehabilitation.

**Skill Development Programme for Persons with Disabilities (SDP-PwD):** Aimed at enhancing employability, this initiative offers specialised skill training to disabled persons in fields like IT, retail, and manufacturing, ensuring economic independence.

**MGNREGA (Mahatma Gandhi National Rural Employment Guarantee Act) for Disabled Persons:** While MGNREGA primarily employs rural citizens, special provisions ensure that disabled individuals receive priority for suitable job opportunities under the scheme.

**Scholarship Schemes for Students with Disabilities:** Education should be accessible to all, and several government scholarships cater specifically to disabled students. Some notable ones include:

## Pre-matric and Post-matric Scholarships

- National Fellowship for Persons with Disabilities
- Free education programs in special schools

**Swavlamban Health Insurance Scheme:** Medical expenses can be overwhelming, and this health insurance scheme offers coverage up to ₹2 lakh for persons with disabilities. The plan covers pre-existing conditions and ensures that beneficiaries receive quality healthcare without financial burden.<sup>28</sup> While most disability-related schemes are gender-neutral, some women-specific schemes like the Mahila Samridhi Yojana and benefits under the Swavalamban Health Insurance Scheme offer additional financial aid and support to disabled women.

## JUDICIAL RESPONSE TO DISABILITIES IN INDIA

### **Ravinder Kumar Dhariwal v. Union of India:**<sup>29</sup>

**Facts:** Following treatment for mental illness since 2009, the government hospital in this instance concluded that the appellant had a permanent impairment of between 40 and 70 per cent. The appellant was more inclined to engage in actions that could be characterised as "misconduct" as a result of his psychological state. As a result, it was determined that initiating disciplinary measures against the appellant constituted indirect discrimination in this case and needed to be addressed. A cognitive deficiency cannot be the only cause of the behaviour that led to disciplinary action. It was also highlighted that: Making fair adjustments for those with disabilities is sacred. If the court finds that the Appellant is unqualified for his current duties, it also takes into account the potential that he may be transferred to another position with comparable pay and perks.

**Issue:** whether the RPWD Act provides sufficient protection to persons with mental disability under its provisions

**Held:** The Supreme Court ruled that the RPWD Act protects people with mental illnesses if disability was one of the causes of the discriminatory behaviour and the definition requirements of a "person with disability" under S. 2(s) are met. Individuals with cognitive disabilities have less ability than their able-bodied counterparts to fulfil job demands. The Supreme Court

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<sup>28</sup> Schemes available at <https://seekho.in/blog/a-detailed-list-of-government-schemes-for-disabled-persons-in-india> - Accessed on 7 July 2025.

<sup>29</sup> (2023) 2 SCC 209; 2021 SCC Online SC 1293 : (2023) 1 SCC (L&S) 181.

looked at, among other things, sections 2(s), 2(h), 3, and 20(4) of the Rights of Persons with Disabilities Act, 2016, as well as Article 14 of the Indian Constitution, to analyse the concept of indirect discrimination and the rights of people with varied talents and mental health problems.

**State of Kerala v. Leesamma Joseph:**<sup>30</sup> The Supreme Court determined that the right to reservation in promotion, which is rooted in statute and required by the Supreme Court, cannot be superseded by the absence of rules governing it unless the government believes that such conduct is not practicable for operational or other reasons. Acknowledging that this may result in misery and inactivity, the government was instructed to address the problem of inactivity among people with disabilities. This includes suggestions on how to draft the appropriate legislation. The respondent, who was given a compassionate appointment, could not be denied the benefit of promotion against the PwD quota for the position of Cashier, even in the absence of relevant laws, since she was capable of carrying out the duties of that position by the Human and Civil Rights of Differently-Abled/Disabled Persons and the Rights of Persons with Disabilities Act, 2016-S. 20 r/w S. 2(y).

**Parmod v. Union of India:**<sup>31</sup> The Supreme Court decided that those with physical disabilities are eligible for quotas in public medical schools. Sections 16 and 18 of the Rights of Persons with Disabilities Act, 2016, were subject to the Court's interpretation.

**Net Ram Yadav v. State of Rajasthan:**<sup>32</sup> India's Supreme Court's two-judge panel made the following remark: The fundamental right of equality, fundamental freedoms, and the right to life granted to disabled people by the Constitution under Articles 14, 15, 16, 19, and 21, which in turn determined the rights of differently-abled people, mental health, and the Rights of Persons with Disabilities Act, 2016; respect for the intrinsic dignity and individual autonomy of people with disability.

**Aryan Raj v. State (UT of Chandigarh):**<sup>33</sup> The Supreme Court upheld Section 34 of the Rights of Persons with Disabilities Act, 2016 – Admission to a course in painting or applied arts and reservation for differently abled persons.

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<sup>30</sup> (2021) 9 SCC 208; 2021 SCC OnLine SC 435; AIR 2021 SC 3076.

<sup>31</sup> (2019) 13 SCC 721; 2018 SCC OnLine SC 1919.

<sup>32</sup> (2022) 15 SCC 81; 2022 SCC OnLine SC 1022.

<sup>33</sup> (2021) 19 SCC 813; 2020 SCC OnLine SC 1172.

**Reena Banerjee v. Government (NCT of Delhi):**<sup>34</sup> The Supreme Court ruled that Article 21 of the Indian Constitution should be interpreted broadly, stating that the right to life includes the right to dignity and the right to protect the mentally and physically ill and disabled.

**Rajive Raturi v. Union of India:**<sup>35</sup> The Supreme Court decided rights of visually disabled persons to proper, adequate and safe access to public places – ten action points enumerated by the petitioner for providing proper access to public facilities to visually impaired persons statutorily recognised under the Disabilities Act, 2016. Thus statutory obligation is cast upon the Central Government/State Government/UTs to do the needful and directions issued for meaningful compliance with statutory provisions. The petition is disposed of with the following directions:

- Constitution of Advisory Boards under Sections 60 and 66 of the Disabilities Act, 2016
- Accessibility in Airports
- Accessibility in Railways
- 10% of government-owned public transport carriers are to be made fully accessible
- Bureau of Indian Standards to embed disability aspect in all.

**Justice Sunanda Bhandare Foundation vs. Union of India:**<sup>36</sup> The Supreme Court of India recommended that the Rights of Persons with Disabilities Act of 2016 be implemented properly. The United Nations Convention on the Rights of Persons with Disabilities and issues about or connected to it are intended to be implemented by the stated 2016 Act. The 2016 Act envisions a fundamental shift and maps out the implementation of the benefits created by the previously stated Act.

**Jeeja Ghosh v. Union of India:**<sup>37</sup> The Court broadly interpreted or construed that the disabled/differently-abled persons enjoy the Right to life and dignity under Article 21 of the Constitution of India.

**M. Sameeha Barvin v. Joint Secretary Ministry of Youth and Sports Department of Sports Government of India and Others:**<sup>38</sup> The Madras High Court's instructions about discrimination against women with disabilities in sports were as follows: to protect or ban

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<sup>34</sup> (2015) 11 SCC 725; (2016) 1 SCC (Civ) 401.

<sup>35</sup> (2018) 2 SCC 413; (2018) 1 SCC (L&S) 404.

<sup>36</sup> (2017) 14 SCC 1; (2018) 1 SCC (L&S) 130.

<sup>37</sup> (2016) 7 SCC 761; AIR 2016 SC 2393; 2016 SCC OnLine SC 510.

<sup>38</sup> 2021 SCC OnLine Mad 6456.

unjust discrimination against the female athletes with disabilities by making sure they have the necessary financial support and resources to take part in every event. to offer all female athletes with disabilities the essential training and free healthcare facilities - To give female athletes with disabilities every opportunity to enjoy themselves and make the most of their potential and talents to succeed in every event - to supply all the adaptive gear, apparel, prosthetics, and other equipment that female athletes with disabilities might need.

## CONCLUSION

Disability is no longer a peripheral issue confined to medical diagnosis or social welfare—it is a central human rights concern that calls for legal recognition, inclusive policies, and societal transformation. As explored in this article, the understanding of disability has evolved significantly, moving from a narrow, impairment-based view to a broader framework that acknowledges the role of environmental and social barriers in creating exclusion. The UN Convention on the Rights of Persons with Disabilities (UNCRPD) has been instrumental in shaping this global shift, asserting that persons with disabilities are not objects of charity but subjects of rights entitled to dignity, autonomy, and full participation in society.

India's response, through constitutional guarantees and legislative reforms such as the Rights of Persons with Disabilities Act, 2016, reflects a growing commitment to inclusion and equality. Judicial pronouncements have further reinforced these rights, clarifying the scope and application of constitutional protections. Moreover, government schemes and initiatives aimed at healthcare, education, employment, and social security are crucial in ensuring that persons with disabilities are not left behind.

The Rights of Persons with Disabilities (Amendment) Rules, 2023, represent a significant step towards creating a more inclusive and accessible environment for persons with disabilities in India, aligning with the principles of the UN Convention on the Rights of Persons with Disabilities. There is a crucial requirement to realise and recognise the rights of persons with disability of any kind to ensure them equal and equitable socio-economic rights and facilitate their inclusion in the mainstream of society. Effective implementation, societal awareness, accessibility, and attitudinal change are critical to translating laws and policies into real-world impact. Disability inclusion must become a shared responsibility across all sectors of society — legal, political, economic, and cultural.