



IMPLEMENTING THE LEGAL IMPERATIVES OF THE RPWD ACT AND ENHANCING ACCESSIBILITY: TRANSFORMATIVE APPROACHES TO THE INCLUSION OF DISABLED STUDENTS IN HIGHER EDUCATION

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Abstract

In international legal environment, the human rights are natural, basic and inherent rights. These rights are guaranteed to every individual of the society. The disabled persons are covered under the purview of the human rights protective zone. The inclusion of disabled students in higher education is a fundamental aspect of fostering an equitable and inclusive society. This scholarly article examines the legal frameworks and challenges associated with implementing the Rights of Persons with Disabilities Act (RPWD Act) in India, while also considering international standards such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Despite the robust legal framework provided by the RPWD Act, significant challenges remain in its implementation. Structural barriers, such as inadequate physical infrastructure and a lack of trained educators, impede the full participation of disabled students in higher education. The article critically analyzes landmark judgements from the Indian judiciary, including Javed Abidi v. Union of India (1999) and Vikash Kumar v. Union Public Service Commission (2021), which underscore the judiciary's role in enforcing accessibility and reasonable accommodation. By comparing these international frameworks with India's RPWD Act, the article identifies best practices and strategies that can be adopted to improve the implementation of inclusive education policies in India. The article calls for a focused approach to integrating digital tools into the educational ecosystem effectively. Finally, the article provides policy recommendations to strengthen the implementation of the RPWD Act and enhance the inclusion of disabled students in higher education. These recommendations include increasing funding for accessibility initiatives, enhancing training programs for educators, and establishing robust monitoring and accountability mechanisms.

I. INTRODUCTION

Understanding¹ the integration of disabled students into higher education is an essential step towards achieving an inclusive and equitable society. India still has the heritage of respecting, caring for and sharing with the differently abled². The journey of disability rights in India began significantly with the enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act in 1995. This Act was a landmark legislation aimed at promoting and ensuring equality of opportunity and full participation of persons

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¹ The term understanding in relation to Disabled Persons *simpliciter* means to get inside, know, feel, acknowledge the world of the Differently Aabled Persons. The Outcome Document of the High-Level Meeting of the General Assembly on the realization of the Millennium Development Goals and other Internationally Agreed Development Goals for Persons with Disabilities: The Way Forward, a Disability-inclusive Development Agenda Towards 2015 and Beyond was adopted on 17 September 2013 through UNGAR 68/L.

² The author as a matter of understanding the subject matter, the terms „disabled“ „differently abled“ are interchangeably used. However for the recognition of human values the term „differently abled“ instead of „disabled“, has to be used. The popular usage is absurd and misleading and has to be declared obsolete. with disabilities. It covered a wide range of areas including education, employment, and accessibility. However, with the adoption of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the United Nations in 2006, and India's ratification of the same in 2007, it became evident that the existing PWD Act needed to be updated to align with international standards. This led to the replacement of the 1995 Act with the Rights of Persons with Disabilities Act, 2016 (RPWD Act), which expanded the scope of disability rights, covering 21 conditions and incorporating many of the CRPD's principles, including non-discrimination, reasonable accommodation, and full societal inclusion. Therefore, the RPWD Act serves as the cornerstone for disability rights, aiming to ensure that individuals with disabilities have equal opportunities and access to education. This legislation is particularly significant in the context of higher education, where the inclusion of disabled students remains a critical challenge.

Globally, the United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006, sets out comprehensive guidelines for the rights and inclusion of persons with disabilities. India, as a signatory to the CRPD, is committed to aligning its domestic laws with these international standards. For respecting and implementing international treaty, India has exclusive law making process under Article 253 of the Constitution of India.³ In this regard, RPWD Act was enacted to fulfil this international legal obligations. The analysis includes a critical examination of landmark judgements from the Indian judiciary, which have played a pivotal role in interpreting and enforcing the RPWD Act.

Through a comprehensive analysis of legal frameworks, judicial interpretations, and international comparisons, this article aims to provide a thorough understanding of the challenges and opportunities in implementing the legal imperatives of the RPWD Act. It underscores the importance of continuous efforts to translate legal provisions into tangible improvements in accessibility and inclusion, ultimately contributing to a more equitable and inclusive higher education system in India and beyond.

In addition to the Indian context, the article explores international perspectives, particularly how the United States has implemented similar provisions through the Americans with Disabilities Act (ADA). By comparing these international frameworks with India's RPWD

³ Article 253 of the Constitution dealt with the law to give effect to international agreement or treaty. It stated that Parliament has the power to make laws for the whole or any part of the country for carrying into effect the agreements with one or more countries. In further, Article 51(c) narrated that foster respect for international law and treaty obligations in the dealing of organized peoples with one another.

Act, the article identifies best practices and strategies that can be adopted to enhance the implementation of inclusive education policies in India. Furthermore, the role of technology in promoting accessibility is examined, with a focus on the RPWD Act's emphasis on assistive technologies. While these technologies have the potential to bridge accessibility gaps, their implementation remains inconsistent, highlighting the need for a more focused approach. Finally, the article offers policy recommendations to strengthen the implementation of the RPWD Act and improve the inclusion of disabled students in higher education. These recommendations include increasing funding for accessibility initiatives, enhancing training programs for educators, and establishing robust monitoring and accountability mechanisms.

II. CHALLENGES OF INTERNATIONAL LEGAL OBLIGATIONS AND THEIR BARRIER TO DOMESTIC IMPLEMENTATION OF RPWD ACT INTO THE HIGHER EDUCATION

India is one of the few countries which have the legal frame works relating to differently abled. Different level

of approaches is available in the definition of disabilities. They are international, regional and national level. Defining the status of the disability has become more complex, due to the failure of creating the clear model. More people now come to know the benefits which are available to the PWD, but many of those with disabilities are still unable to access the programme/scheme which is framed through the appropriate legislations⁴, due to that certain level was not reached by most of them.

The policy designs regarding the Persons With Disabilities (PWD) of different societies like India primarily focus from the past experience and are not aimed or armored with contemporary issues. In order to understand disability, it is pertinent to recognise its social fabric, cultural conceptions associated with it and the structure of gender relations. Further, the right of the PWD albeit in a theoretical mode has been institutionalized. The disability management group varies in terms of composition, authority structure, interpersonal relationship, generation and management of resources within the society⁵.

The seminal argument is centered on the question, how best to provide the required socio-economic aid for the PWD. Family, Voluntary Agencies and State constitute cardinal reservoirs of assistance. More than ten percent of the world's population has some type of disabilities. Around eighty percent of them live in developing countries, where they experience material deprivation and social ostracization⁶. Medical based understanding on the subject *per se* acts as a lethal deterrent to the reformatory views. The problems faced by the PWD are composite in nature and need determined efforts at various levels, for instance politico-socio-economic schemes. Discrimination and that of innumerable Human rights violations have been the significant circumventing factors for the efforts of the disability advocates and policy-makers.

At present in global level, the role of the United Nations Organisation (UN) has fuelled the revolutionary spirit in the field of Promotion and Protection of Human rights. The UN General Assembly (UNGA) is the principal organ of the world. The UNGA Resolutions (UNGAR) has become a resourceful source in the area of the policy making of the States. The UN Convention on the Rights of the Persons with Disabilities⁷ (CRPD) is the first legally binding instrument in the history to set out the obligations on the States to promote, protect and ensure rights of millions of disabled people across the globe. It is also recognized differently abled and others share a common humanity. The Indian Government still made the attempt to adopt the model of the CRPD. It has ventured in favour of implementing the rights of the PWD. The effort is towards finding a cure and but not rehabilitation.

⁴Roger Jeffery and Nidhi Singal (2008), Measuring Disability in India, *Economic and Political Weekly*, Vol. 43, pp. 22-24. Measuring disability generally known as medical, but it dealt in the economic and political fields.

⁵Nilika Mehrotra (2004), Women, Disability and Social Support in Rural Haryana, *Economic and Political Weekly*, Vol. 39, No. 52, pp. 5640-5644. This article has the research aspect regarding the issues of women.

The RPWD Act and the CRPD share a common goal of ensuring that persons with disabilities enjoy their human rights and are fully included in society. However, they differ in their specifics and scope. The RPWD Act defines disability broadly, covering 21 conditions such as autism, cerebral palsy, and multiple disabilities, which aligns closely with the CRPD's inclusive definition (Article 1 of CRPD). The RPWD Act (Section 16) and CRPD (Article 24) both emphasize the right to inclusive education, mandating educational institutions to provide necessary facilities and support. The alignment of the RPWD Act with CRPD highlights India's commitment to international disability rights standards while addressing local needs.

According to CRPD, accessibility and inclusive education are mandating rights to disabled persons.⁸ It delves into the legal imperatives of the RPWD Act, particularly focusing on Sections 16, 40-46, and 72-74, which address inclusive education, accessibility, and compliance mechanisms. These sections are crucial for creating an environment that supports the full participation of disabled students in higher education. However, despite the robust legal framework, significant barriers remain in the practical implementation of these provisions. The RPWD Act (Sections 40-46) mandates accessible infrastructure and services, mirroring CRPD's Article 9 on accessibility. In India, most of the higher education institutions often lack physical infrastructure to support disabled students, such as ramps and accessible restrooms, despite mandates in RPWD Act Sections 40-46. In further, online education platforms frequently fail to meet accessibility standards required under the RPWD Act and CRPD Article 9.

Despite the progressive legal frameworks provided by the RPWD Act and the CRPD, implementation faces numerous challenges. One of the most significant barriers is the lack of adequate physical infrastructure in educational institutions. Many schools, colleges, and universities lack the necessary facilities such as ramps, accessible restrooms, and tactile paths. This deficiency makes it difficult for students with physical disabilities to navigate and access these spaces independently. Furthermore, digital accessibility remains a major issue. While the RPWD Act and CRPD mandate accessible digital content, many online education platforms fail to meet these standards, excluding students with visual and hearing impairments from fully participating in digital learning environments.

In this regard, Indian higher judiciary rendered solutions in its various judgments. For example, in *Deaf Employees Welfare Association Case*⁹: Justice Gita Mittal of the Delhi High Court ruled in favor of inclusive education and employment opportunities for persons with hearing disabilities. In *Vikash Kumar Case*¹⁰: The Supreme Court, led by Justice D.Y. Chandrachud, reinforced the need to provide scribes for visually impaired candidates, emphasizing reasonable accommodation under the RPWD Act.

⁸Michael Ashley Stein (2007), Disability Human Rights, *California Law Review*, Vol. 95, No. 1, pp. 75-121.

⁹UN General Assembly Resolution 61/106 adopted on 13 December, 2006. All the original instruments relating to the UN are available at

<http://www.un.org>. This website always gets priority for collecting data on the international legal subject matter

⁸ Articles 9 and 24 of the CRPD have focused specifically on accessibility and inclusive education, mandating that states take appropriate measures to ensure these rights.

⁹DeafEmployeesWelfareAssociationv.UnionofIndia(2013).

¹⁰VikashKumarv.UnionPublicServiceCommission(2021).

III. BEST PRACTICES OF ENHANCING ACCESSIBILITY OF EDUCATION AND TRANSFORMATIVE APPROACHES OF INCLUSION OF DISABLED STUDENTS

In acute circumstances people who have had a disability in a past such as people who had severe depression, but have since recovered are also come under the category of disability. Generally disability under the European context means that any physical or mental impairment that substantially limits one or more of the major life activities of a person. Further it adds something in the context of the employment that a person with disability who is substantially handicapped in obtaining or keeping employment or in undertaking works in his own account. The Americans with Disabilities Act¹¹ (ADA) defines disability as a condition that “substantially limits” such activities as walking, seeing, caring for oneself, hearing, speaking, breathing, learning, and working. It applies to persons with acquired immunodeficiency syndrome (AIDS), diabetes, and cancer, as well as to alcoholics and substance abusers undergoing treatment¹².

For best practices, the RPWD Act (Section 16) requires the development of inclusive curricula and teaching methods. CRPD Article 24 stresses the need for inclusive education systems. Both the RPWD Act (Section 2(y)) and CRPD (Article 2) define reasonable accommodation as necessary modifications to ensure persons with disabilities enjoy all human rights. The RPWD Act (Sections 41-42) mandates the promotion and development of assistive technologies, aligning with CRPD Article 4. The RPWD Act’s emphasis on accessibility extends to digital learning platforms, although implementation remains inconsistent. The RPWD Act (Section 17) mandates training programs for teachers to cater to the needs of disabled students, aligning with CRPD Article 24(4). Legal requirements for adapting curricula are to be more inclusive, as mandated by the RPWD Act (Section 16).

Despite strong legal frameworks, enforcement remains weak due to lack of awareness, inadequate funding, and insufficient staff training. Courts play a crucial role in interpreting and enforcing rights under the RPWD Act. For instance, in Justice Sunanda Bhandare Foundation Case¹³, the Delhi High Court emphasized timely implementation of the Act.

¹¹ ADA approved by the United States Congress in July 1990 that would ban discrimination against persons with physical or mental disabilities in the areas of employment in local government services, public accommodations, transportation, and telecommunication. Above the all being a tool of optimal usage for disabilities.

¹² ADA Enforcement Provisions, *Mental and Physical Disability Law Reporter*, Vol. 33, No. 4 (2009), pp.646- 647. US government takes lot of efforts for implementing the provisions of ADA for welfare of the PWDs.

¹³JusticeSunandaBhandareFoundationv.UnionofIndia(2017).

IV. CONSTRUCTIVEMECHANISMSFORMONITORING,EVALUATIONAND ACCOUNTABILITY IN HIGHER EDUCATION

In India, the RPWD Act incorporates many principles of the CRPD, such as non- discrimination and reasonable accommodation. India established bodies like the Chief Commissioner for Persons with Disabilities (CCPD) to oversee the implementation of the RPWD Act, aligning with CRPD Article 33 on national implementation and monitoring frameworks. The RPWD Act (Sections 72-74) requires regular compliance audits of institutions. CRPD Article 33 also mandates effective monitoring mechanisms. The Chief Commissioner for Persons with Disabilities oversees compliance and addresses grievances, similar to mechanisms under CRPD Article 33. Both the RPWD Act (Section 46) and CRPD (Article 9) set out standards for accessibility in physical and digital environments. Evaluation metrics under the RPWD Act should align with CRPD's emphasis on assessing the actual impact on the lives of disabled persons. Judgements such as *Javed Abidi v. Union of India* (1999) and *Vikash Kumar v. Union Public Service Commission* (2021) highlight the judiciary's proactive stance in ensuring that disabled students receive reasonable accommodations and accessibility.

In *National Association for the Deaf Case*¹⁴, the Indian higher judiciary highlight judicial intervention in enforcing the rights of disabled individuals in higher education. For instances such as the Delhi University accessibility case mandated that the university has to ensure accessible education for all. In *National Federation of the Blind Case*¹⁵, Justice R.M. Lodha directed the UPSC to allow blind candidates to use a scribe and provide additional time during examinations, reinforcing the principle of reasonable accommodation. This judgment emphasized that denying reasonable accommodation violates Article 21, which guarantees the right to life and personal liberty.

To further strengthen the RPWD Act and enhance the inclusion of persons with disabilities, several legal reforms and policy enhancements are necessary. One of the key proposals is to amend the RPWD Act to include clearer guidelines and stronger penalties for non- compliance. This would ensure that institutions take their legal obligations seriously and make necessary changes to become more inclusive. Additionally, involving persons with disabilities in policy-making processes, as suggested by CRPD Article 4(3), can lead to more effective and relevant policies. This participatory approach ensures that the voices and experiences of persons with disabilities are considered in the formulation of laws and policies that affect their lives.

¹⁴National Association for the Deaf v. Union of India (2011).

¹⁵National Federation of the Blind v. Union Public Service Commission (2014).

V. CONCLUSION

The effective implementation of the RPWD Act in higher education institutions is a legal and moral imperative. By enhancing accessibility, providing reasonable accommodations, and fostering an inclusive environment,

institutions can ensure that disabled students have equal opportunities to succeed. Transformative approaches such as inclusive curriculum design, technological integration, policy advocacy, and community engagement can drive meaningful change. Ultimately, a commitment to inclusion and accessibility not only benefits disabled students but enriches the entire educational community, promoting diversity, equity, and excellence in higher education.

International collaboration and learning from global best practices are essential for enhancing the inclusion of persons with disabilities. By aligning the RPWD Act more closely with CRPD standards, India can ensure that its disability laws meet international benchmarks. Harmonizing domestic laws with international standards can enhance the inclusion of disabled students in higher education and other areas of society. For instance, countries like Finland and Norway have made significant strides in inclusive education, with comprehensive policies and practices that support students with disabilities. Adopting similar approaches and integrating them into India's legal and policy framework can lead to more effective and inclusive outcomes.

References:

1. Constitution of India, Articles–14, 21, 51(c) and 253.
2. Rights of Persons with Disabilities Act, Sections–16, 40-46, and 72-74
3. UN Convention on the Rights of Persons with Disabilities, Articles– 1, 2, 4, 9 & 24.
4. Nilika Mehrotra (2004), Women, Disability and Social Support in Rural Haryana, *Economic and Political Weekly*, Vol. 39, No. 52, pp. 5640-5644.
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9. National Association for the Deaf v. Union of India (2011).
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12. Vikash Kumar v. Union Public Service Commission (2021).