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A Critical Analysis of the Rights of Persons with Disabilities in India and a Comparative Global Outlook

ORIGINAL ARTICLE



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Abstract

The global discourse on disability has undergone a profound shift from the medical and charitable models to the social and human rights-based model, crystallized in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). India, home to a significant population of persons with disabilities, signalled its commitment to this paradigm by ratifying the UNCRPD and enacting the transformative Rights of Persons with Disabilities (RPWD) Act in 2016. This article provides a critical analysis of the evolution and current state of disability rights in India. It begins by tracing the legislative journey from pre-independence paternalism to the rights-based RPWD Act, highlighting its progressive features, including an expanded definition of disability and mandates for inclusion. The analysis then critically examines the chasm between the law's promise and its implementation, pinpointing barriers such as

attitudinal stigma, inaccessible infrastructure, and inadequate funding. Through a comparative lens, the article juxtaposes India's framework with the anti-discrimination model of the United States (Americans with Disabilities Act), the public sector duty model of the United Kingdom (Equality Act), and the constitutional approach of Kenya. The comparison reveals that while India's de jure framework is robust, its de fact effectiveness is hampered by weaker enforcement mechanisms compared to its global counterparts. The article concludes that transcending this implementation gap requires a concerted strategy focused on stringent enforcement, attitudinal change, and sufficient financial commitment to realize the constitutional promise of equality for all citizens.

Key Words

Disability Rights, UNCRPD, RPWD Act 2016, Comparative Disability Law, Implementation Gap, Social Model.

Introduction

The understanding of disability has been radically redefined over recent decades. The erstwhile medical model, which located the “problem” of disability within the individual, viewing them as an object of treatment and charity, has been decisively challenged.¹ In its place, the social model has gained ascendancy, positing that people are disabled not by their impairments but by societal barriers—physical, attitudinal, and institutional—

that restrict their participation.² This paradigm shift found its ultimate global expression in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), adopted in 2006. India, with an estimated 2.68% of its population (26.8 million people) living with a disability according to the 2011 Census, ratified the UNCRPD in 2007, binding itself to align its national laws with the Convention's principles.

This ratification culminated in the landmark Rights of Persons with Disabilities (RPWD) Act, 2016, which replaced the outdated Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995. The RPWD Act represents a quantum leap in Indian disability jurisprudence, explicitly embracing the social model. This article critically argues that while India's de jure commitment to disability rights, as embodied in the RPWD Act, is commendable and aligns with global standards, its de facto realization remains critically constrained by a vast implementation gap, deeply entrenched societal attitudes, and insufficient resource allocation. To substantiate this thesis, the article will first trace the historical evolution of disability law in India. It will then provide a critical examination of the RPWD Act, 2016, analyzing its progressive provisions and inherent limitations. The core of the article will involve a comparative analysis with the disability rights frameworks of the United States, the United Kingdom, and Kenya, to contextualize India's progress and draw lessons from diverse enforcement models. Finally, the article will conclude with recommendations for bridging the gap between legislative intent and lived reality.

The Indian Legal Landscape: From Paternalism to Personhood

Prior to the 1995 Act, the Indian legal approach to disability was fragmented and overwhelmingly paternalistic. Laws such as the Lunacy Act (1912) and the Lepers Act (1898) were custodial and charity-oriented, viewing Persons with Disabilities (PwDs) as objects of pity requiring state protection rather than as rights-bearing citizens.³ The Persons with Disabilities (PWD) Act, 1995 marked the first significant, though limited, step towards a rights-based approach. It introduced concepts like non-discrimination and equal opportunity and instituted a 3% reservation in Government employment and educational institutions. However, its scope was narrow, recognizing only seven disabilities, and its enforcement machinery was weak, relying on advisory bodies with limited powers.⁴

The RPWD Act, 2016, was a direct legislative response to India's obligations under the UNCRPD. It represents a foundational shift in policy, firmly anchoring itself in the social model of disability. Its key progressive features include:

1. **Expanded Definition of Disability:** The Act recognizes 21 specified disabilities, a significant increase from the previous seven, incorporating conditions such as acid attack victims, Parkinson's disease, and Specific Learning Disabilities.⁵
2. **Rights-Based Language:** It moves from a language of "welfare" to one of "rights," explicitly guaranteeing the right to equality, life with dignity, and accessibility.
3. **Enhanced Reservations:** It increases the reservation quota in Government establishments from 3% to 4% and in higher education institutions from 3% to 5%.
4. **Inclusive Education:** It mandates that all educational institutions funded or recognized by the Government provide inclusive education and make reasonable accommodations.
5. **Legal Capacity:** In a radical departure, the Act recognizes the legal capacity of PwDs on an equal basis with others and provides for supported decision-making, moving away from the regressive system of plenary guardianship.⁶

A Critical Appraisal: The Implementation Chasm

Despite its progressive legislative intent, the RPWD Act, 2016, faces monumental challenges in implementation, which critically undermine its effectiveness.

- **The Accessibility Barrier:** The Act mandates that all existing public buildings and transport be made accessible within a stipulated time. However, the reality is starkly different. A vast majority of public infrastructure from Government offices and courts to railway stations and buses remains largely

inaccessible. The prescribed deadlines for achieving universal accessibility have been repeatedly missed, underscoring a profound lack of political will and enforcement.⁷

- **The Attitudinal Hurdle:** Perhaps the most significant barrier is the deep-rooted societal stigma and paternalism. PwDs are often perceived as objects of charity or as being “less capable.” This attitude permeates families, educational institutions, and workplaces, creating a “rights-disabling” environment that the law alone cannot dismantle.
- **Gaps in Implementation Machinery:** While the Act establishes Chief Commissioners and State Commissioners for PwDs, these offices are often under-resourced, lack sufficient autonomy, and are plagued by bureaucratic delays. The grievance redressal mechanism remains complex and inaccessible for many, denying them timely justice.⁸
- **Data and Financial Constraints:** The 2011 Census data is outdated, and there is no robust, real-time data on PwDs, which hampers effective policy planning. Furthermore, the budgetary allocation for the implementation of the RPWD Act has been consistently insufficient, with funds for accessibility projects and support services falling far short of the requirement.⁹

Comparative Global Outlook

A comparative analysis helps contextualize India’s progress and challenges by examining different models of disability rights enforcement.

United States: The Anti-Discrimination Model

The United States pioneered the civil rights approach through the Americans with Disabilities Act (ADA) of 1990.¹⁰

- **Features:** The ADA is fundamentally an anti-discrimination law, prohibiting discrimination in employment, public accommodations, and transportation. It legally mandates “reasonable accommodations” unless it causes “undue hardship.” Its primary enforcement mechanism is private litigation, where individuals can sue for damages.
- **Comparison with India:** Unlike India’s RPWD Act, which combines anti-discrimination with affirmative action (reservations), the ADA focuses squarely on barrier removal. The U.S. model benefits from a more robust judicial enforcement mechanism and a longer history of disability activism, fostering greater societal awareness. However, India’s reservation system is a more direct form of redistribution, though its efficacy is contingent on implementation.

United Kingdom: The Public Sector Duty Model

The United Kingdom’s approach, particularly through the Equality Act 2010, emphasizes proactive duties on public bodies.¹¹

A cornerstone is the Public Sector Equality Duty (PSED), which requires public authorities to have “due regard” to the need to eliminate discrimination and advance equality in all their activities. This embeds inclusivity into policy-making.

- **Comparison with India:** The RPWD Act has elements of a public sector duty but lacks the overarching, proactive “due regard” standard of the UK’s PSED. The UK also benefits from a strong independent equality body (the Equality and Human Rights Commission) with significant enforcement powers, a feature that India’s commissioner system lacks.

Kenya: A Global South Constitutional Model

Examining a peer nation from the Global South provides a nuanced comparison. Kenya’s Constitution of 2010 and the Persons with Disabilities Act, 2003 present a robust framework.¹²

The Kenyan Constitution explicitly includes disability as a prohibited ground for discrimination and

mandates the state to enact laws ensuring the rights of PwDs. Its National Council for Persons with Disabilities (NCPWD) oversees a 5% employment reservation in both public and private sectors.

Comparison with India: Kenya's approach of constitutionally entrenching disability rights provides a stronger foundational guarantee than India's statutory framework. The extension of reservation mandates to the private sector is a bold step India has not taken. However, Kenya, like India, faces significant implementation challenges, demonstrating that progressive laws in the Global South often confront similar systemic obstacles.

Conclusion and Recommendations

The journey of disability rights in India is a narrative of profound legislative achievement set against a backdrop of persistent implementation failures. The RPWD Act, 2016, is a monumental statute that aligns India's legal framework with the highest global standards, drawing from the anti-discrimination ethos of the U.S., the proactive duty spirit of the U.K., and the constitutional commitment seen in nations like Kenya. However, the comparative analysis reveals that a strong law is a necessary but insufficient condition for empowerment without a concomitant focus on enforcement, accountability, and cultural change.

The critical gaps in accessibility, attitudinal acceptance, and financial commitment create a chasm between the promise of the law and the lived experience of PwDs. To bridge this chasm, a multi-pronged strategy is essential:

1. **Strengthening Enforcement:** Empower the offices of the Commissioners with greater autonomy, financial resources, and quasi-judicial powers. Establish fast-track courts for disability-related cases.
2. **Mainstreaming Accessibility:** Launch a systematic, time-bound, and well-funded national campaign for making all public infrastructure, digital platforms, and transport fully accessible. Impose stringent penalties for non-compliance.
3. **Driving Attitudinal Change:** Integrate disability awareness into school curricula and launch nationwide media campaigns to promote the social model and challenge deep-seated stereotypes.
4. **Enhancing Financial Allocation:** The Government must significantly increase budgetary allocations specifically for accessibility projects, support services, and the creation of a robust, real-time database on disability.
5. **Clarifying "Reasonable Accommodation":** Develop clear, sector-specific guidelines on what constitutes reasonable accommodation and undue burden to prevent misuse by employers and service providers.

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