Inclusive Education for Children with Disabilities in India: An Appraisal of Legal Frameworks, Judicial Trends, and Ground Realities

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ABSTRACT:

Inclusive education represents a paradigm shift from segregation to integration, recognising education as a fundamental right of every individual, regardless of any disability. This research paper critically examines the legislative framework, judicial pronouncements, and ground-level realities concerning inclusive education for persons with disabilities in India. The study analyses the journey from the Persons with Disabilities Act, 1995, to the Rights of Persons with Disabilities Act, 2016, as well as international conventions and the constitutional framework under Article 21-A. An empirical study conducted as a part of this work reveals significant gaps between legal provisions and their implementation, including inadequate infrastructure, lack of awareness of legal rights, and difficulties in obtaining disability certificates. The paper identifies systemic challenges, including inadequate funding, physical inaccessibility, negative attitudes, and insufficient teacher training. The paper concludes with actionable recommendations to harmonise legal intent with educational practice, emphasising the need for universal design, stakeholder sensitisation, and robust grievance redressal mechanisms.

Keywords: Inclusive Education, Disability Rights, RPWD Act 2016, Article 21-A, Educational Accessibility, Special Education, Reasonable Accommodation, Universal Design, etc.

1. Introduction

As Nelson Mandela famously stated, "Education is the most powerful weapon which you can use to change the world." Education is the basic fundamental right of every individual, enshrined in international treaties and national constitutions worldwide. For education to be truly universal, accessibility and inclusivity are fundamental

prerequisites. Inclusive education addresses the needs of differently-abled persons by bringing them into the mainstream educational system rather than

segregating them in special institutions. While the Right to Education has been enshrined as a fundamental right in India under Article 21-A of the Constitution, its realisation for the approximately 2.68 crore disabled persons (2.21% of the population, as per the 2011 Census) remains fraught with challenges.[1]The National Family Health Survey-5 (2019-21) suggests a higher prevalence due to historical underreporting, indicating the problem may be even more severe.[2] The majority of this population (69%) resides in rural areas, often excluded from the developmental narrative.[3] The Constitution of India, through its transformative vision, mandates not mere formal equality but substantive equality, a principle repeatedly affirmed in Navtej Singh Johar v. Union of India[4]and Justice K.S. Puttaswamy v. Union of India.[5] Disability rights jurisprudence in India has evolved from a charity-based model to a rights-based model, with the RPWD Act 2016 serving as the legislative cornerstone of this transformation.

Historically, disability in India was viewed through a lens of charity or supernatural karma, leading to

segregation. However, global movements such as the Salamanca Statement (1994)[6] and the UN Convention on the Rights of Persons with Disabilities (UNCRPD, 2006)[7]catalysed a paradigm shift from medical rehabilitation to social inclusion. The Government of India has responded with successive policies, from the Integrated Education for Disabled Children (IEDC, 1974) to the Rights of Persons with Disabilities Act, 2016.[8] Yet, a persistent gap remains between legislative intent and social implementation. This paper explores the concept, legal framework, and empirical status of inclusive education in India, aiming to identify the bottlenecks preventing equitable access.

2. Conceptualising Disability and Inclusive Education

2.1. The Evolving Definition of Disability

Disability is no longer viewed solely as an individual medical ailment. According to the World Health Organisation (WHO), there are three dimensions of disability: impairment (a problem in body function or structure), activity limitation (difficulty encountered in executing a task or action), and participation restriction (a problem experienced in involvement in life situations).[9] The Oxford Dictionary defines disability as "a physical or mental condition that means you cannot use a part of your body completely or easily, or that you cannot learn easily."[10]

The UNCRPD preamble crystallises the modern view, stating that disability results from the

[1]Census of India, Disabled Population Data (2016 update), *available at:*https://censusindia.gov.in/vital_statistics/SRS_Reports__2016.html.

[2]National Family Health Survey (NFHS-5), 2019-21, Ministry of Health and Family Welfare, Government of India, *available at:* dhsprogram.com/pubs/pdf/FR375/FR375.pdf

[3] Persons with Disabilities (Divyangjan) in India – A Statistical Profile: 2021, Ministry of Statistics and Programme Implementation, Government of India.

[4]AIR 2018 SC 4321

[5] AIR 2017 SC 4161

[6]UNESCO, The Salamanca Statement and Framework for Action on Special Needs Education (World Conference on Special Needs Education, Salamanca, Spain, 7-10 June 1994).

[7]Convention on the Rights of Persons with Disabilities, 2006, GA Res 61/106, UN Doc A/RES/61/106 (13 December 2006).

[8] THE Rights of Persons with Disabilities Act, 2016 (ACT NO. 49 OF 2016)

[9]World Health Organisation, International Classification of Functioning, Disability and Health (ICF) (Geneva, 2001).

[10]Available at: https://www.lexico.com/definition/disability.

interaction between persons with impairments and attitudinal or environmental barriers that restrict their full and effective participation in society on an equal footing with others.[11] Consequently, the Indian legal framework has expanded its definition. While the Persons with Disabilities Act, 1995 recognized only seven categories of disabilities (e.g., blindness, leprosy-cured, mental illness, low vision, hearing impairment, locomotor disability, mental retardation, and mental illness),[12] the National Trust Act, 1999 covered autism, cerebral palsy, mental retardation and multiple disabilities,[13] and the RPWD Act 2016 now lists twenty-one conditions, including cerebral palsy, dwarfism, muscular dystrophy, acid attack victims, specific learning disorders, autism spectrum disorders, and blood disorders, replacing "mental retardation" with "intellectual disability."[14]

2.2. The Shift to Inclusive Education

Inclusive education is an approach that aims to educate all children, regardless of strengths, weaknesses, or disabilities, within the same environment, rather than segregating them into special schools. The World Declaration on Education for All (1990) helped in amplifying the process of inclusive education.[15]It is rooted in the principle that schools must adapt to the child, not vice versa. Key international instruments have driven this:

i) Declaration on the Rights of Disabled Persons (1975): Proclaimed by the General Assembly in its resolution 3447 (XXX) dated 9th December 1975, this declaration defines a disabled person as any person unable to ensure by themselves the necessities of a normal individual or social life as a result of a deficiency in physical or mental capabilities.[16]

ii) Salamanca Statement (1994): Urged governments to adopt inclusive education as a matter of law or policy, stating that "all children study together, wherever feasible, regardless of whatever challenges or differences they may have."[17]

iii) UNCRPD: Article 24 of this Convention mandates that States ensure an inclusive education system at all levels and lifelong learning, prohibiting exclusion based on disability.[18]

iv) Sustainable Development Agenda (SDG 4.5): Emphasises equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities.[19]

v) The Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993) also recognises the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities in integrated settings, ensuring that

[11]Convention on the Rights of Persons with Disabilities, 2006, Preamble.

[12]The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, S 2(i).

[13]The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, S 2(j).

[14]The Rights of Persons with Disabilities Act, 2016, S 2(zc).

[15]World Declaration on Education for All (Adopted by the World Conference on Education for All, Jomtien, Thailand, March 1990).

[16]Declaration on the Rights of Disabled Persons, GA Res 3447 (XXX), UN Doc A/RES/3447 (9 December 1975).

[17]UNESCO, The Salamanca Statement and Framework for Action on Special Needs Education (1994) 8.

[18]Convention on the Rights of Persons with Disabilities, 2006, art 24.

[19]United Nations, Sustainable Development Goals, Goal 4.5, *available at:* https://www.un.org/sustainabledevelopment/education/.

education of persons with disabilities is an integral part of the educational system.[20]

3. International Obligations and Indian Response

3.1. The Asian and Pacific Decade of Disabled Persons (1993-2002)

Persons with disabilities constitute the most marginalised group in the Asian and Pacific region, with women and girls with disabilities facing double discrimination. The United Nations launched the Decade of Disabled Persons (1983-1992)for governments of the Asian and Pacific region. Being a signatory to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region (Beijing, 1st to 5th December, 1992), India enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, to fulfil its international obligations.[21]

3.2. Biwako Millennium Framework (2003-2012)

In extension of the Asian and Pacific Decade for another decade (2003-2012), the Commission adopted a resolution to promote an inclusive, barrier-free, and rights-based society for persons with disabilities. The priority areas included self-help organisations, women with disabilities, early detection and education, training and employment, access to the built environment and public transport, and access to information and communication technologies.[22]

3.3. Convention on the Rights of Persons with Disabilities (2006)

India ratified the Convention on 1st October, 2007.[23] The Convention defines "discrimination based on disability" as any distinction, exclusion or restriction based on disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise of all human rights and fundamental freedoms. It includes all forms of discrimination, including denial of reasonable accommodation.[24] Article 24 of the UNCRPD is particularly critical, containing five sections that address the need to include children with disabilities in mainstream education, free primary and secondary education, appropriate means of communication, teacher training in sign language and Braille, and non-discrimination in vocational training.[25]

4. The Constitutional and Statutory Framework in India

4.1. Constitutional Mandates

The Indian Constitution provides a robust, though initially implicit, foundation for the rights of persons with disabilities. The Constitution introduced Article 21-A (Eighty-sixth Amendment) Act, 2002, providing for free and compulsory education for all children betweenthe ages of six and fourteen years as a Fundamental Right.[26] The Right of Children to Free and Compulsory Education (RTE) Act, 2009, represents the consequential legislation envisaged under Article 21-A.[27]

[20]Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, GA Res 48/96, UN Doc A/RES/48/96 (20 December 1993), Rule 6.

[21]The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Preamble.

[22]Biwako Millennium Framework for Action towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific, ESCAP Res 58/4 (22 May 2002).

[23]United Nations, Convention on the Rights of Persons with Disabilities, *available at:* https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

[24]Convention on the Rights of Persons with Disabilities, 2006, Art. 2.

[25]*Id.,* Art. 24.

[26]The Constitution of India, Art 21-A (inserted by the Constitution (Eighty-sixth Amendment) Act, 2002).

[27]The Right of Children to Free and Compulsory Education Act, 2009 (No. 35 of 2009).

The specific constitutional protections available to disabled persons include:

1. Article 14: Equality before law and equal protection of laws.[28] Reasonable accommodation is implicit in equality jurisprudence.[29]
2. Article 15(1) and (2): Prohibits discrimination on grounds of religion, race, caste, sex or place of birth, and no citizen shall be subjected to any disability in access to shops, public restaurants, hotels and places of public entertainment.[30]
3. Article 16: Equality of opportunity in public employment.[31]
4. Article 17: Abolishes untouchability.[32]
5. Article 21: Guarantees the right to life and liberty to every individual, including those with disabilities.[33]
6. Article 23: Prohibits traffic in human beings and forced labour.[34]
7. Article 24: Prohibits employment of children (including disabled children) under the age of fourteen in factories, mines or hazardous occupations.[35]
8. Article 25: Guaranteesthe right to religious freedom.[36]
9. Article 29(2): Provides that no person shall be refused admission into any educational institution maintained by the State or receiving aid from State funds on grounds of religion, race, caste, or language.[37]
10. Article 32: Guarantees right to constitutional remedies.[38]
11. Article 41: Right to work, education, and public assistance in cases of disablement.[39] Directs the State to make effective provision; supplements fundamental rights[40]
12. Article 45: Mandates that the State shall endeavour to provide free and compulsory education for all children (including those impaired) until they complete the age of fourteen years.[41]
13. Article 46: Promotion of educational interests of weaker sections. [42]Judicially interpreted to include persons with disabilities.[43]
14. Article 41 obligates the State to make effective provision for securing the right to work, to education, and to public assistance in cases of disablement. While Directive Principles are non-justiciable, the Supreme Court in the Unni Krishnan case (1993) held that they supplement and illuminate fundamental rights and cannot be ignored by the State.

4.2. Judicial Interpretation

The right to education has been elevated to the status of a fundamental right through judicial interpretation. In Mohini Jain v. State of Karnataka,[44] the Hon'ble Court observed that "the right to education is at the heart of the right to life, flowing immediately from and intertwined with it, and a life of dignity can only be ensured when education plays a vital role."

[28]The Constitution of India, Art.14

[29]Vikash Kumar v. Union of India, AIR 2021 SC 2447

[30]The Constitution of India, Art. 15(1) and (2).

[31]Id., Art. 16. Section 34 RPWD Act (4% reservation) flows from this provision.

[32]*Id.,* Art. 17. Applicable to social exclusion faced by disabled persons.

[33]*Id.,* Art. 21.Includes right to live with dignity, education, and access to justice.

[34]*Id.,* Art. 23.Protects disabled persons from exploitation.

[35]*Id.,* Art. 24.

[36]*Id.,* Art. 25. Guarantees religious freedom to all, including disabled persons.

[37]*Id.,* Art. 29(2).Does not explicitly include disability – gap filled by RPWD Act.

[38]*Id.,* Art. 32.

[39]*Id.,* Art. 41

[40]Unni Krishnan v. State of Andra Pradesh, AIR 1993 SC 2178.

[41]*Id.,* Art. 45.

[42]*Id.,* Art. 46.

[43] Rajneesh Kumar Pandey &Ors v. Union of India, 2021 SCC OnLine SC1005; Purswami Ashutosh (Minor) through Dr Kamlesh Virumal Purswami v. Union of India, (2019) 14 SCC 422.

[44]AIR 1992 SC 1858.

In J.P. UnniKrishnan v. State of Andhra Pradesh,[45] the Apex Court held that the parameters of the right to education must be understood in the context of the Directive Principles of State Policy, which includes Article 45. In M.C. Mehta v. State of Tamil Nadu &Ors,[46] the Supreme Court stated that Article 45 had acquired the status of a fundamental right following the Constitutional Bench's decision in Unni Krishnan.

The State of Madras v. Shrimati Champakam Dorairajan[47]is a historic case in which the Supreme Court held that fundamental rights are inviolable and cannot be curtailed by any legislative or executive action, except as provided in Part III of the Constitution. The "capitation fee case" (Mohini Jain) also affirmed that education cannot be considered a product for sale and that every person in India has a constitutionally protected "right to education."[48]

4.3. Rights of Persons with Disabilities Act, 2016

The RPWD Act 2016 is the cornerstone of disability jurisprudence. Unlike its 1995 predecessor, it aligns with the UNCRPD's social model. The Act declares that all people with disabilities are persons before the law, regardless of their disability.[49]

Key Definitions (Section 2)

1. Reasonable accommodation: Necessary and appropriate modifications and adjustments not imposing disproportionate or undue burden[50]
2. Universal design: Design of products, environments, programmes and services to be usable by all people without the need for adaptation[51]
3. Benchmark disability: 40% or more of specified disability[52]

Fundamental rights provisions:

1. Right to equality and non-discrimination[53]
2. No person shall be discriminated against on the grounds of disability[54]
3. No person shall be deprived of personal liberty on the grounds of disability[55]
4. Protection from violence, abuse, and exploitation[56]
5. Legal capacity – equal recognition before the law[57] (overrides any inconsistent law)
6. Salient Provisions for Education:
7. Section 3: People with disabilities have a legal right to equality, a dignified existence, and respect for their integrity just like everyone else.
8. Section 4(2): Competent government and local authorities shall ensure that all children with disabilities have the right on an equal basis to freely express their views on all matters affecting them, taking into account their age and disability.
9. Section 7(1): Outlines legal options available to victims of abuse, violence, and exploitation.
10. Section 16: Mandates inclusive education for children with disabilities in all recognised educational institutions, including private schools. Institutions must accept them equally, provide sports and recreation facilities, and make buildings accessible, support social and academic development, ensure appropriate communication modes for blind/deaf/deaf-blind persons, identify specific learning disabilities early, and provide transport for disabled children and their attendants.
11. Section 17: Prescribes implementation measures, including surveys of school-age children every five years to identify those with

[45] *Supra note* 40
[46] AIR 1997 SC 699.
[47] AIR 1951 SC 226.
[48] Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.
[49] The Rights of Persons with Disabilities Act, 2016, S 3.
[50] Ibid. S 2(Y)
[51] *Id.,* S 2(ZC)
[52] *Id.,* S 2(r)
[53] *Id.,* S 3(1)
[54] *Id.,* S 3(2)
[55] *Id.,* S.5
[56] *Id.,* S.7
[57] *Id.,* S.12

disabilities, establishment of teacher training institutions, training of professionals and staff, establishment of resource centres, free learning materials and assistive devices up to age 18 years, scholarships, and curriculum/examination system adjustments.

12. Section 19 (Chapter IV): Contains provisions relating to skill development and employment, including low-interest loans (microcredit) and promotion of goods and services created by persons with disabilities.

13. Section 24(3): Offers social security to orphans, homeless, and abandoned children with disabilities.

14. Section 27: Directs the competent authority to provide rehabilitation services in health, education and employment.

15. Section 30: Directs competent authorities to restructure courses, redesign sports infrastructure, develop technology, provide multi-sensory essentials, allocate funds for sports facilities, and promote disability-specific sporting events.

16. Section 31: Every child with a benchmark disability between the ages of six and eighteen years shall have the right to free education in a neighbourhood school or special school of their choice in an appropriate environment.

17. Section 32(1): Provides 5% reservation to persons with benchmark disabilities in all Government and Aided higher education institutions, with a five-year relaxation in the upper age limit.

18. Section 34(1): Provides 4% reservation in Government jobs to persons with benchmark disabilities.

19. Section 45(1): Directs the competent authority to make all public buildings, including schools, accessible within five years of the notification of the rules.

20. Section 47: Directs the competent authority to include disability as a component for all education courses for school, college and university teachers and conduct training programmes with a focus on sports, games, and adventure activities.

21. A critical lacuna exists at the intersection of the RPWD Act and the RTE Act, 2009. While Section 31 of the RPWD Act guarantees free education from ages 6 to 18, the RTE Act (Section 3) mandates free and compulsory education only for ages 6 to 14. Children with non-benchmark disabilities between 14 and 18 years fall into a regulatory gap, an issue flagged in the case of Rajnesh Kumar Pandey v. Union of India.[58]

4.4. Other Relevant Legislation

1. The Rehabilitation Council of India Act, 1992: Establishes safeguards to ensure quality of services provided by rehabilitation professionals and maintains standards of professional behaviour.

2. The Mental Healthcare Act, 1987: Consolidates and modifies the law relating to treatment and care of mentally ill persons, providing better arrangements with respect to their property and affairs.

3. The National Trust Act, 1999: Enables persons with disabilities to live as independently as possible within their communities, strengthens facilities to provide support to persons with disabilities to live within their own families, and facilitates equal opportunities and full participation.

5. Critical Analysis: Loopholes and Implementation Gaps

Despite the progressive nature of the RPWD Act 2016, several structural and practical loopholes persist. The Act has an inbuilt institutional arrangement to implement its provisions, including the Central Advisory Board (CAB), State Advisory Board (SAB), Chief Commissioner for Persons with Disabilities (CCPD), State Commissioners (SCPD), District Level Committees, and Special Courts at the district level for speedy trial of offences under

[58]Rajnesh Kumar Pandey v. Union of India (2021) 17 SCC 1

Section 84.[59] However, implementation remains weak.

i) Defining Mental Illness:While mental illness has been included, the special needs of people with mental illness (PMI) and their families have not been adequately addressed. Section 7(2) was added to protect persons with disabilities from violence, abuse and exploitation, but its application to people with mental illness needs appropriate modification. Families play a critical role in the treatment of mental illness in India due to the scarcity of trained personnel. Yet, the Act's provisions may make family members and caregivers less willing to provide necessary help.

ii) Universal Legal Capacity vs Practical Reality: The Act seems to presume universal legal capacity for everyone with a disability, including those with severe mental illness. However, Sections 62(1) and 68(1) prohibit members of Central and State Advisory Boards "who have been declared by a competent court to be of unsound mind" from serving on such Boards, a provision that appears contradictory.

iii) Reservation Disparities: People with mental illness are underrepresented in jobs reserved for non-disabled persons, along with intellectual disabilities, autism, specific learning disabilities, and multiple disabilities (only 1% for all five combined).[60]

iv) Invisible Exclusion: The "zero rejection" policy exists in law, but in practice, schools (especially private ones) subtly discourage admissions by citing lack of infrastructure or "readiness."

v) Universal Design vs Retrofit: Section 45 requires accessibility within five years. However, the data show that most schools focus on retrofitting ramps rather than on universal design, which is often insufficient.

vi) Teacher Preparedness: While Section 17 mandates training, empirical evidence indicates a significant majority of teachers have no training in special education. Teacher education programs rarely have compulsory modules on cross-disability training.

vii) Non-implementation of Section 84 (Special Courts): Section 84 of the RPWD Act 2016 mandates the designation of Special Courts at the district level for speedy trial of offences under the Act. However, no State has fully complied with this mandate. This violates Article 21 (right to speedy trial) as interpreted in Khatri v. State of Bihar[61], where the Supreme Court held that the State cannot plead inability or financial constraints to implement a statutory mandate.

viii) Absence of State Rules under RPWD Act: Section 101 empowers State Governments to make rules for carrying out the provisions of the Act. A majority of States have not notified their State Rules, resulting in the non-operationalisation of State Advisory Boards (Section 62), vacancies in the offices of State Commissioners for Persons with Disabilities (Section 79), and the absence of district-level grievance redressal mechanisms. Without State Rules, the statutory architecture remains incomplete, depriving citizens of their statutory remedies.

6. Landmark Judicial Decisions under the RPWD Framework

Vikash Kumar v. Union Public Service Commission and Others (2021)[62]

The appellant suffered from Writer's Cramp, a disability not explicitly covered under the benchmark categories for scribe use in the UPSC Civil Services Exam. The Supreme Court held that denying a scribe's services would ignore the important rights recognised by the RPWD Act 2016. The Court observed that DoPT and UPSC made fundamental errors in interpreting the provisions of the RPwD Act 2016, and that limiting scribe services to specific disabilities would violate the statute's intent. The guidelines released by the Ministry of Social Justice and

[59]The Rights of Persons with Disabilities Act, 2016, SS. 84, 62(1), 68(1).

[60]*Id.,* S 34.

[61]Khatri v. State of Bihar, (1981) 1 SCC 627

[62]2021) SCC OnLine SC 84.

Empowerment on 29th August 2018 were recognised as not covering all circumstances.

Leema Rose v. District Collector (2017)[63]

A petition was filed for appointment as an Anganwadi Worker in the Integrated Child Development Service Department. The petitioner, who was 60% physically disabled, applied under the 4% reservation for persons with disabilities under the RPWD Act 2016. The Court directed respondents to send a call letter to the petitioner for consideration of her application on the merits.

Disabled Rights Group &Anr. v. Union of India &Ors (2018)[64]

The Supreme Court ruled to broaden the scope of the lawsuit to include all educational establishments, holding that all public and private educational institutions receiving government funding must set aside seats for people with disabilities (at least a 3% reservation). Persons with benchmark disabilities were entitled to five years' age relaxation when applying to higher education institutions covered under Section 32 of the Disabilities Act, 2016.

Rajnesh Kumar Pandey and Ors v. Union of India and Ors (2017)[65]

A writ petition was filed to ensure free and compulsory education to children with special needs and to appoint special teachers as per the pupil-teacher ratio of 1:5. The Apex Court observed and passed several directions:

i) Central Government must notify norms and standards of pupil-teacher ratio for special schools and separate norms for special teachers.

ii) Initiate the appointment process to fill vacancies for professional/special teachers.

iii) Training school staff to handle children with special needs.

iv) Until permanent arrangements are made, the service of itinerant teachers can be availed.

v) Authorities may explore merging unviable special schools with relatively viable special schools.

The Supreme Court directed that these directions should be followed across the country and directed all State Governments to file status reports.[66]

Ranjit Kumar Rajak v. State of West Bengal (2021)[67]

The Calcutta High Court held that denial of admission to a child with disability in a regular school violates both the RTE Act, 2009 and the RPWD Act, 2016. The Court directed payment of compensation to the child and observed that "the zero rejection policy is not a mere slogan but a statutory mandate. Any school receiving State aid cannot reject a disabled child for want of infrastructure – infrastructure must be created."

State of Kerala v. Leesamma Joseph (2021)[68]

The Kerala High Court (affirmed by a Division Bench) held that the 4% reservation for persons with benchmark disabilities under Section 34 of the RPWD Act extends to promotions as well, not merely initial appointments. The Court further ruled that reasonable accommodation under Section 2(y) applies to the work environment, requiring employers to make necessary modifications to enable disabled employees to perform their duties effectively.

Anamol Bhandari v. Delhi University (2012)[69]

Although decided under the PWD Act 1995 (pre-RPWD), this Supreme Court judgment remains authoritative. The Court held that a university cannot arbitrarily deny scribe facility to a disabled student. The right to education under Article 21-A includes the right to examination

[63](2017) SCC OnLine Mad 30600.
[64](2018) 2 SCC 397.
[65]WP (C) No. 876 of 2017.
[66]*Id.,* para 57.
[67] (2021) SCC OnLine Cal 2837
[68] (2021) SCC ONLine Ker 4008
[69] (2012) 7 SCC 600

accommodation. Any denial must be justified by compelling State interest.

7. Ground Realities:An Empirical Snapshot

7.1. Research Methodology

The empirical research was conducted to understand the problems and challenges faced by persons with disabilities in accessing education. The study utilised both primary and secondary sources. Due to time and resource constraints, only a few educational institutions (both government and private) were selected. Simple random sampling, purposive sampling and multistage stratified sampling methods were employed. The respondents selected included disabled students, their parents, teachers, NGO representatives, and administrators.

7.2. Data Interpretation

Table 7.1: Demographic Composition of Respondents

S.No.	Occupation	Frequency	Percentage
1	Administrator	5	5%
2	Educationist	20	20%
3	Student	40	40%
4	Parent	10	10%
5	General Public	24	24%
6	NGO	1	1%

The data show that, among 100 respondents, students constituted the largest group (40%), followed by the general public (24%).

Key Findings:

Inclusivenessvs Reality: All 100 respondents (100%) agreed that inclusive education is a right of every person. However, 95% believed that inclusive education is notprovided to every student, with only 5% answering affirmatively.

Disability as a Barrier: 55% of respondents believed that disability is a barrier to inclusive education, while 35% did not.

Admission Convenience: 45% of respondents believed it is convenient for disabled students to take admission in regular schools, while 40% believed the opposite.

Infrastructural Crisis: Only 35% of respondents agreed that educational institutions have adequate infrastructure to meet the needs of disabled persons, while 64% disagreed. Specifically, 48% believed there is proper access to classrooms/toilets/libraries, while 49% disagreed. Regarding transport facilities, only 20% believed proper transport exists, while 50% disagreed, and 30% had no opinion.

Teacher Training: 61% of respondents believed that educational institutions offer special programs to sensitise teachers to special needs.

Legislative Awareness: Only 45% of respondents were familiar with legislation enacted to uplift disabled persons. 71% were unaware of the harmonised guidelines issued by the Ministry of Housing and Urban Affairs on universal accessibility. Regarding compliance with guidelines for new building construction, 65% of respondents were unable to form an opinion, while only 12% believed that proper care had been taken.

Reservation and Examinations: 81% of respondents believed there is a reservation for specially abled students in educational institutions. 46% believed the mode of conducting examinations is disability-friendly, while 44% disagreed.

Free Education: 66% of respondents agreed that disabled students with benchmark disability receive free education as per the statutory obligation.

Scholarships: 28% believed every disabled student receives a fellowship/scholarship, 29% believed very few receive it, and 43% believed a reasonable number receive it.

Disability Certificate: A significant finding was that 79% of respondents described the process of obtaining a disability certificate as "difficult," 6% as "very difficult," and none as "very easy."

Survey and Identification: 41% of respondents could not say whether a survey exists to identify

children with special abilities, while 40% said one does.

Government Portal: Only 39% of respondents were aware of any government portal or grievance cell to address problems faced by specially-abled students.

A limitation of the present empirical study is the absence of disaggregated data by type of disability, gender, rural/urban location, and caste/tribe. Constitutional jurisprudence under Article 15 prohibits discrimination on multiple intersecting grounds. Future research must adopt an intersectional framework to capture the compounded discrimination faced by, for example, a Dalit girl with intellectual disability in a rural school.

8. Challenges to Implementing Inclusive Education

In India, a large number of people are suffering from one or another disability. Many barriers hinder the goal of achieving inclusive education. The survey of existing literature, empirical analysis, and observational study has pointed to certain key issues that warrant serious deliberation if we truly wish to cater to the special needs of special children.

1. Teacher reluctance: Teachers are not ready to pay special attention to children with disabilities, considering it a burden requiring extra work.
2. Community non-acceptance: People do not show a positive attitude when encountering a person with disability, treating it as contagious.
3. Peer bullying: Children may make fun of classmates with disabilities, bringing down morale.
4. Parental resistance: Parents of non-disabled children are not ready to send their children to schools where students with disabilities are allowed.
5. Lack of teacher training programs: There is a significant lack of programs for training teachers who teach children with special needs. According to a survey conducted in Delhi, 70% of teachers had no experience teaching children with disabilities, 87% had no access to support systems in classrooms.[70]
6. Costly assistive devices: Assistive devices are costly and not affordable to children with disabilities or school authorities.
7. High dropout rates: According to the All-India Educational Survey (1998), around 20 million children aged 6-14 need special education, but less than 5% of the disabled population is enrolled in school, and 94% fails to receive educational services.
8. Marginalised Groups within Disabled: Certain groups face compounded discrimination. 69% of disabled persons live in rural areas where services are scarce. Girls with disabilities have lower enrolment rates compared to boys. Persons with intellectual disabilities have the lowest rate of enrolment due to limited services, greater educator effort required, and parental resistance from non-disabled children's families.

9. Recommendations for Bridging the Gap

Based on the analysis of the legal framework, judicial pronouncements, and empirical data, the following measures are recommended:

i. For the Government:

a. Simplify Certification: Create a single-window, time-bound online portal for issuing disability certificates to avoid harassment and delays, addressing the finding that 79% of respondents find this process difficult.

b. Mandate Universal Design: Amend building codes to enforce universal design in all new schools rather than allowing "ramp-only" retrofitting. Section 45 compliance must be strictly monitored.

c. Audit and Penalties: Establish a Disability Audit Commission to inspect schools. Denying admission to a disabled child should result in loss of recognition or funding.

[70] Syeda K Ahmed, David Jeffries *et al.,* Teacher Professional Development for Disability inclusion in low-and middle-income Asia-Pacific Countries: An evidence and gap map, *Campbell Systematic Reviews* (2021).

d. Broad Interpretation of Inclusive Education: Focus not only on children with disabilities but also consider the needs of non-disabled children to create truly inclusive environments.

e. Terminology Reform: Incorporate the term "Divyang" (as suggested by Prime Minister Modi in his 'Mann ki Baat' program) into all related statutes to shift perception from disability to unique ability.

f. Operationalise Section 84 Special Courts: All districts must have designated Special Courts for offences under the RPWD Act within six months. These courts shall follow fast-track procedures, with cases to be disposed of within one year of filing.

g. Mandatory Disability Impact Assessment: Every new educational policy or scheme must undergo a mandatory Disability Impact Assessment (DIA) before notification, akin to environmental impact assessment. This flows from the precautionary principle read into Article 21.

h. Fill vacancies of State Commissioners: All vacancies in the office of State Commissioner for Persons with Disabilities (Section 79) must be filled within three months. Reports of State Commissioners have statutory weight under Section 81 and must be tabled in the State Legislature.

ii.For Educational Institutions:

a. Mandatory Inclusion Policy: All schools must put in place a policy of inclusion, making it mandatory to grant admission to students with disabilities.

b. Curriculum Revision: Integrate disability studies into B.Ed. and M.Ed. curricula as a core subject, not an elective.

c. Resource Allocation: Utilise Rs. 1200 per child (under SSA/RMSA) specifically for Individualised Education Plans (IEPs) and assistive technology (audiobooks, hearing loops).

d. Infrastructure Alterations: Ensure ramps and wheelchair access to each part of the building, adequate transport facilities, and accessible toilets/libraries.

e. Special Teams: Create special teams for making strategies to meet the needs of students with special needs and address issues faced by teachers.

iii. For Teachers:

a. Shift from Sympathy to Empathy: Training must focus on practical classroom management strategies, differentiated instruction, and Universal Design for Learning (UDL).

b. Itinerant Teacher Model: Implement the Supreme Court directive in the Rajnesh Kumar Pandey Case using itinerant teachers to service multiple schools until permanent staff is hired.

c. Regular Training Programs: Conduct 2-3 week training programs where teachers learn about different disabilities and effective teaching strategies.

d. Incentives: Provide salary increases or other incentives for teachers who take on the extra responsibility of teaching disabled students.

e. Collaborative Responsibility: Make all teachers collectively responsible for inclusion, working together to achieve its aims.

iv. For Society:

a. Public Awareness Campaigns: Make people aware by highlighting examples of disabled persons succeeding in life (e.g., Albert Einstein, who had Asperger's syndrome).

b. Sensitisation: Teach society about various disabilities—that only a few are contagious, that curiosity about disability causes is irritating to disabled persons, and that physical disability does not imply mental incapacity.

c. Positive Attitudes: Families of non-disabled children should maintain relationships with families having disabled children and develop positive attitudes.

V. For the Judiciary:

a. Designate monitoring benches: Each High Court shall designate at least one division bench to monitor RPWD Act implementation through continuing mandamus (following the Vishaka v.

State of Rajasthan model[71] for sexual harassment guidelines).

b. Suo motu cognisance: Courts may take suo motu cognisance of violations of disability rights in educational institutions, treating them as violations of fundamental rights under Article 21.

c. Expedite pending cases: All cases involving denial of admission, denial of reasonable accommodation, or discrimination against disabled students shall be prioritised and disposed of within six months.

Most notably, cooperation among relevant stakeholders, viz., Parents, teachers, and community leaders, must be developed to build better inclusive schools. Their participation and collaboration are essential in achieving this goal.

10. Conclusion

The Right to Education Act, 2009, assures that all children receive an education, regardless of caste, religion, aptitude, or ability. However, the journey from constitutional promise to social reality remains incomplete. The RPWD Act 2016 represents a monumental shift in rights discourse, yet empirical evidence reveals a persistent "implementation deficit." The right to education is meaningless if the school is inaccessible, the teacher is untrained, the administrative process is broken, or society remains unreceptive.

The UN Committee on the Rights of Persons with Disabilities has rightly stated that "only inclusive education can provide excellent education and social development for persons with disabilities...it is the most appropriate method for States to ensure universality and non-discrimination in the right to education." Inclusive education is not merely a cost-effective alternative to special schools; it is the only means of fostering a society based on respect, empathy, and diversity.

The Preamble to the Constitution of India promises "dignity of the individual" and "equality of status and opportunity." The RPWD Act 2016 translates that promise into specific, justiciable entitlements. However, as the Supreme Court reminded in State of Kerala v. Leesamma Joseph (2021), "legislative intent without administrative implementation is a mere mirage." India's constitutional morality will be tested not by the number of laws enacted, but by whether a disabled child can walk into any school, any classroom, and any examination hall – without special permission, stigma, or barriers. To honour the constitutional promise and international commitments, India must move beyond tokenism. Only when a child with a disability can navigate their school, access their curriculum, and participate in recreation without asking for "special" permission can we truly say the "most powerful weapon" of education has been placed in their hands. That day alone will mark the true realisation of Article 21-A.

[71]Vishaka v. State of Rajasthan AIR 1997 SC 3011