

**DISABILITY AND THE DILEMMA OF ACCESS: REASSESSING INDIAN AND  
INTERNATIONAL LEGAL AND INSTITUTIONAL COMMITMENTS TO INCLUSIVE  
EDUCATION**

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**ABSTRACT**

Despite the unequivocal entrenchment of the right to education for persons with disabilities in instruments such as the UN Convention on the Rights of Persons with Disabilities (CRPD) and India's Rights of Persons with Disabilities Act, 2016, systemic exclusions endure, mediated by structural, attitudinal, and institutional barriers. This research delves into the persistent disjuncture between normative commitments to inclusive education and their practical realization within Indian and international legal architectures. The research delineates how legal frameworks, though formally progressive, often default to assimilationist paradigms that reproduce segregation and tokenism under the guise of inclusion. By appraising constitutional provisions, legislative mandates, judicial interventions, and policy schemes, this research exposes the insufficiency of fragmented regulatory approaches & inertia afflicting enforcement. Comparative perspectives drawn from jurisdictions exhibiting more robust inclusionary practices elucidate the limitations and potentialities of transposing international norms into diverse socio-economic contexts. The research contends that a reconfiguration of India's disability law is imperative, predicated on substantive equality, intersectionality, and enforceable entitlements rather than aspirational rhetoric. This research proposes a composite strategy encompassing legal harmonization, institutional consolidation, targeted resourcing, and participatory monitoring. This research work underscores the ethical and constitutional imperative of dismantling the entrenched dilemmas of access that continue to circumscribe the educational trajectories of persons with disabilities, thereby reaffirming their status as rights-bearing subjects rather than passive beneficiaries of welfare dispensation.

**Keywords:** Disability Rights, Inclusive Education, Right to Education, UNCRPD, Children with Disabilities, Assimilationist Paradigms, Rights-Based Approach, Educational Exclusion

## INTRODUCTION

The legal and policy discourse surrounding disability has undergone a paradigmatic transformation from a paternalistic and charitable approach to a rights-based and development-oriented framework. Disability, long relegated to the peripheries of social welfare and medical intervention, has now been recognized as an intrinsic dimension of human diversity, implicating the core guarantees of dignity, equality, and non-discrimination under international law. Instruments such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) have decisively reframed disability not merely as a health concern but as a justiciable rights issue, demanding the dismantling of structural barriers & active participation of persons with disabilities in all spheres of life. This normative shift has prompted States Parties, including India, to re-evaluate legal and institutional architectures to ensure the realization of substantive equality for persons with disabilities within developmental agendas.<sup>1</sup>

Central to this reconceptualization is the evolution of inclusive education as a global normative imperative rather than a discretionary policy preference. The Salamanca Statement of 1994, and subsequently Article 24 of the UNCRPD, enshrine the principle that education systems must be designed to accommodate and celebrate learner diversity rather than perpetuate segregation or tokenistic integration. Inclusive education is thus articulated as a legal entitlement, encompassing the right to access quality education on an equal basis with others, reasonable accommodation of individual requirements, and effective individualized support measures. In this sense, inclusion transcends mere physical placement within mainstream institutions; it requires a radical transformation of pedagogical practices, attitudinal paradigms, and structural arrangements to ensure genuine participation and empowerment.<sup>2</sup> The normative consensus that exclusionary or segregated educational practices constitute a form of discrimination underscores the pressing obligation upon states to reorient their legal and policy frameworks accordingly.

Yet, despite the proliferation of international and domestic commitments to inclusion, the dilemma of access persists as a formidable challenge. Structural barriers, manifested in

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<sup>1</sup> Nidhi Singal, *Inclusive Education in India: International Concept, National Interpretation*, 53(3) INT'L J. DISABILITY, DEV. & EDUC. 351 (2007).

<sup>2</sup> *Id.*

inaccessible infrastructure, inadequately trained educators, & absence of assistive technologies, intersect with entrenched social prejudices that continue to cast disability as deviance or deficit. Economic disadvantage further compounds this exclusion, as children with disabilities are disproportionately represented among the poorest and most marginalized communities, rendering the aspiration of inclusion illusory in the absence of targeted redistributive measures. Empirical data in India and comparable jurisdictions consistently reveal profound disparities in enrollment, retention, and learning outcomes, highlighting the persistence of de facto segregation notwithstanding de jure commitments to equality.<sup>3</sup>

This persistent chasm between normative commitments and experiential realities reveals a deeper crisis of legal and institutional implementation. The rhetorical embrace of inclusion has not translated into consistent, rights-affirming praxis, due in part to fragmented governance structures, inadequate resource allocation, and weak accountability mechanisms. Indeed, while legislative instruments such as the Rights of Persons with Disabilities Act, 2016 & Right of Children to Free and Compulsory Education Act, 2009 embody formal recognition of inclusive education, their operationalization is vitiated by ambiguities in mandates, jurisdictional overlaps, & lack of enforceable remedies for violations. This tension between legal aspiration and practical exclusion underscores the urgent necessity of reimagining both the normative content and institutional modalities of inclusive education to fulfill the promise of equality and non-discrimination embedded in constitutional and international law.<sup>4</sup>

According to data derived from the Census conducted in the year 2011, the aggregate population of individuals identified as persons with disabilities in India was enumerated at approximately 21.9 million, a figure which constitutes an estimated 2.21 per cent of the nation's total population. Within this demographic subset, it was observed that approximately 7.86 million were minors below the age of eighteen years, representing nearly 1.7 per cent of the entire child population at the time of enumeration. These figures are of critical importance for policy formulation and legislative safeguards, as they provide a foundational basis to assess the scale of disability prevalence & corresponding obligation of the State to fulfil the mandate imposed by the Constitution of India and relevant statutory frameworks. The disproportionate distribution of

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<sup>3</sup> Sushant Birla & Meena Rao, *Reasonable Accommodation and Interdependence: Revisiting the Dynamics of Disability Inclusion in Higher Education in India*, 34(2) J. GENDER STUD. 206 (2024).

<sup>4</sup> *Id.*

disability incidence between the sexes was further evidenced by the data indicating that males accounted for an estimated 57.54 per cent of persons with disabilities, whereas females comprised approximately 42.46 per cent of this population segment. Additionally, the Census illuminated the pronounced rural concentration of disability, with approximately 74.81 per cent of persons with disabilities residing in rural habitations, thereby underscoring the exigency of region-specific interventions and resource allocation directed towards marginalized and underserved geographies. Such statistical disparities necessitate a rigorous re-examination of the extant legal and programmatic apparatus to ensure the implementation of targeted affirmative measures consistent with the principles of equality, non-discrimination, and reasonable accommodation as envisaged under the Rights of Persons with Disabilities Act, 2016 and international obligations, including the United Nations Convention on the Rights of Persons with Disabilities to which India is a State Party.<sup>5</sup>

The typology of disabilities identified within this population encompasses a wide spectrum of impairments, including but not limited to locomotor disabilities, visual impairments, hearing impairments, and intellectual disabilities. Furthermore, specific conditions such as autism spectrum disorders, learning disabilities, and psychosocial disabilities have historically been subject to exclusion or under-recognition under preceding legal definitions and policy instruments, thereby precluding affected individuals from accessing requisite entitlements, services, and institutional support. The absence of uniform and updated diagnostic criteria & lack of robust awareness among authorities have aggravated this exclusion, resulting in systemic inequities and infringements of the right to education, health, and social participation guaranteed under domestic law.<sup>6</sup>

With respect to educational access and school enrolment, empirical evidence furnished by the UNESCO State of the Education Report of 2019 for India demonstrates that merely 61% of children with disabilities within the 5–19 years age bracket was enrolled in formal educational institutions, a proportion significantly lower than the corresponding enrolment rate of approximately 71% for the general child population within the same age cohort. This discrepancy not only reflects entrenched barriers to educational inclusion but also reveals the

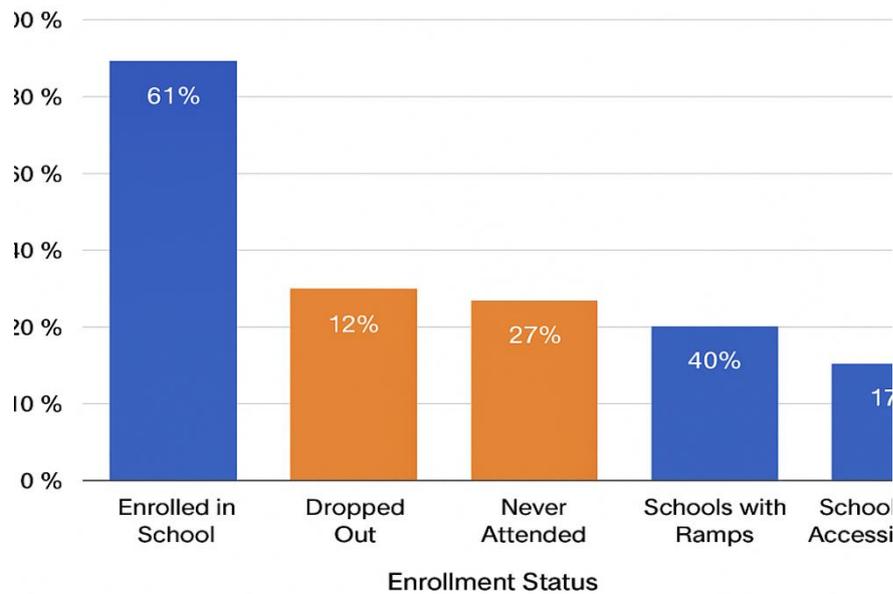
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<sup>5</sup> David Hernández-Saca, Catherine Kramarczuk Voulgarides & Susan Larson Etscheidt, *A Critical Systematic Literature Review of Global Inclusive Education*, 13(12) EDUC. SCI. 1212 (2023).

<sup>6</sup> *Id.*

insufficiency of existing infrastructure and pedagogical practices to accommodate diverse learning needs.<sup>7</sup> The data further indicates that nearly 12% of children with disabilities had discontinued their education after initial enrolment, while an alarming 27% had never attended any educational institution, thereby evidencing pervasive patterns of early and sustained exclusion. Such statistics assume critical relevance in assessing the State’s compliance with statutory duties under Section 16 of the Rights of Persons with Disabilities Act, which imposes an unequivocal obligation upon the appropriate government to ensure that all educational institutions funded or recognized by it provide inclusive education to children with disabilities without discrimination and on an equal basis with others.<sup>8</sup>

**Educational Enrollment and Access Among Children with Disabilities in India**



*Graph 1*

<sup>7</sup> Y. P. Pal & A. Agarwal, *Attitudinal Barriers to Inclusive Education in India*, INT’L J. INCLUSIVE EDUC. (2015), <https://www.researchgate.net/publication/273457268>.

<sup>8</sup> *Id.*

The challenges are particularly acute in the early childhood stage, where approximately three-fourths of all children with disabilities below the age of five are not enrolled in any form of educational or preparatory program, and one-fourth of those aged between five and nineteen years similarly lack access to institutional education. This pronounced exclusion during foundational developmental years compounds disadvantages and forecloses opportunities for future learning and social integration. Supplementary data compiled under the Unified District Information System for Education (UDISE+) corroborates modest progress in expanding inclusive education infrastructure; however, it concurrently confirms that the rate of enrolment of children with disabilities remains substantially below their proportion in the general population. This underrepresentation underscores structural impediments in fulfilling the objectives of universal elementary education and perpetuates disparities that contravene the spirit of the Right of Children to Free and Compulsory Education Act, 2009.<sup>9</sup>

In addition to the deficiencies in enrolment and pedagogical adaptation, the physical inaccessibility of educational facilities continues to be a formidable obstacle. Current estimates reveal that fewer than 1 per cent of all educational institutions across the country can be categorized as disabled-friendly in any meaningful sense, given that merely 40 per cent of schools possess ramps facilitating access for students with mobility impairments, and an even smaller proportion, approximately 17%, are equipped with sanitary facilities adapted to the requirements of persons with disabilities.<sup>10</sup> This pervasive infrastructural inadequacy constitutes a direct violation of statutory mandates to provide barrier-free access and reasonable accommodation, thereby undermining the realization of substantive equality & effective enjoyment of rights on an equal basis with others.

## CONCEPTUAL FOUNDATIONS

The legal understanding of disability has historically been dominated by the medical model, which conceptualizes disability as an inherent defect or impairment located within the individual. Under this paradigm, the law traditionally treated persons with disabilities as objects of charity

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<sup>9</sup> A. Arora & P. K. Sahu, *Inclusive Education in India: How and Why?*, J. DISABILITY STUD., <https://pubs.iscience.in/journal/index.php/jds/article/view/286>.

<sup>10</sup> *Id.*

or rehabilitation, thereby legitimizing segregated policies and paternalistic interventions. In contrast, the social model of disability, which has progressively informed international legal instruments and domestic policy discourses, reconceptualizes disability as the outcome of interaction between persons with impairments and societal barriers, both physical and attitudinal, that impede their participation on an equal basis with others. This model deconstructs the deterministic view of impairment and demands that legal systems shift their focus from individualized treatment to structural transformation. The jurisprudential shift has profound implications for positive obligations on states to dismantle barriers and to reconfigure institutional arrangements to ensure substantive equality.<sup>11</sup>

The Convention on the Rights of Persons with Disabilities (UNCRPD) represents a paradigmatic departure from earlier welfare-centric frameworks, embedding disability within a robust rights-based architecture. The UNCRPD enshrines principles of inherent dignity, individual autonomy, non-discrimination, and full participation, thereby reframing disability rights as inalienable human rights rather than optional entitlements contingent on state discretion. Article 1 explicitly defines persons with disabilities in broad terms, emphasizing the interactional dimensions of disability rather than pathologizing impairment per se. This rights-based approach imposes binding legal obligations on States Parties to respect, protect, and fulfill the rights of persons with disabilities, particularly in relation to access to education, employment, and public life. Crucially, it operationalizes the social model through legally enforceable guarantees, creating a normative baseline for national legislation and policy harmonization.<sup>12</sup>

Inclusive education, as articulated in Article 24 of the UNCRPD, is founded on the principle that all learners, regardless of impairment, must be provided access to quality education within mainstream settings, accompanied by appropriate support. It entails more than mere physical placement of children with disabilities in regular schools; it requires structural adaptations to pedagogy, curricula, and assessment practices to accommodate diverse learning needs. International consensus, reflected in the Salamanca Statement, identifies inclusion as both a process & goal, the process of identifying and removing barriers to participation, & goal of achieving full educational participation and achievement for all learners. The conceptual

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<sup>11</sup> N. G. Dey & S. L. Bika, *The Journey Towards Inclusive and Equitable Education for Students with Disabilities in India*, 8(3) RESEARCH REV.: INT'L J. MULTIDISCIPLINARY 65 (2023).

<sup>12</sup> *Id.*

foundation is grounded in a commitment to equality and non-discrimination, thereby challenging systems premised on segregation or parallel tracks of education delivery.

It is critical, both conceptually and normatively, to distinguish inclusive education from integration and mainstreaming, which are often erroneously conflated in policy and legal discourse. Integration typically implies the physical placement of learners with disabilities in regular schools without concomitant changes in institutional culture, curricula, or pedagogy, thereby placing the burden of adaptation on the individual. Mainstreaming suggests the selective inclusion of learners who can conform to existing standards with minimal accommodations. In contrast, inclusion imposes a systemic duty to transform educational environments, ensuring that they are inherently responsive to the full spectrum of learner diversity. This distinction is not merely semantic; it delineates the contours of states' legal obligations and forms the basis for assessing compliance with international standards such as those articulated under the UNCRPD and General Comment No. 4 on Article 24.<sup>13</sup>

The imperative for inclusive education derives from a confluence of educational, social, and economic rationales underpinned by rights-based jurisprudence. Empirical evidence demonstrates that inclusive education enhances academic and social outcomes not only for children with disabilities but also for their peers by fostering empathy, cooperation, and respect for diversity. Legally, inclusion operationalizes the right to equality and non-discrimination enshrined in instruments such as the ICESCR & UNCRPD. From a social justice perspective, the logic of inclusion is further bolstered by intersectionality, the compounded disadvantage experienced by learners at the nexus of disability, gender, poverty, caste, and minority status. For example, girls with disabilities from marginalized caste communities face systemic exclusion that cannot be addressed through single-axis policy interventions. Therefore, a transformative inclusion agenda must be anchored in an intersectional framework that recognizes and redresses these overlapping vectors of discrimination.<sup>14</sup>

## INTERNATIONAL LEGAL COMMITMENTS

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<sup>13</sup> G. C. Singh, *Disability, Social Policy and Inclusiveness: The Missing Links*, 17(1) INT'L J. DISABILITY & HUM. DEV. 1 (2018).

<sup>14</sup> *Id.*

UDHR, though declaratory and lacking binding force per se, has exerted profound normative influence by crystallizing education as a core entitlement within the architecture of international human rights law. Article 26 of the UDHR recognizes the right to education and envisions education directed to the full development of the human personality & strengthening of respect for human rights. This foundational articulation has been substantively elaborated in Article 13 of the ICESCR, which imposes upon State Parties a positive obligation to recognize the right of everyone to education and to progressively implement measures ensuring free and compulsory primary education. Importantly, the Committee on Economic, Social and Cultural Rights (CESCR) has affirmed that the right to education must be accessible to all without discrimination of any kind, thereby establishing a legal predicate for inclusive education as an indivisible dimension of the right itself. Nevertheless, the ICESCR's reliance on "progressive realization," subject to resource constraints, has enabled States to defer structural reforms in the name of capacity, giving rise to critiques of normative indeterminacy and enforcement deficits.<sup>15</sup>

UNCRPD constitutes a paradigmatic shift from the welfare-oriented, medicalized conception of disability toward a robust rights-based model predicated on dignity, autonomy, and equality. Article 24 of the UNCRPD enshrines the specific right of persons with disabilities to inclusive education at all levels, on the basis of equality of opportunity. Notably, it creates binding obligations to ensure that persons with disabilities are not excluded from the general education system and to provide reasonable accommodation and individualized support measures. The CRPD Committee, through General Comment No. 4 (2016), has articulated a detailed normative framework distinguishing inclusive education from mere integration, characterizing the former as entailing systemic transformation of educational environments to dismantle discriminatory structures. However, despite its progressive content, the interpretive guidance has not been universally embraced, and several State Parties have persisted in dual-track or segregated schooling regimes, raising concerns about the effectiveness of treaty monitoring and domestic incorporation.<sup>16</sup>

The Salamanca Statement and Framework for Action on Special Needs Education, adopted in 1994 under UNESCO auspices, while lacking formal treaty status, has been seminal in

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<sup>15</sup> Neeru Arora, *Special and Inclusive Education in India: Interpretation and Implementation*, 8(16) J. ADVANCES & SCHOLARLY RESEARCHES IN ALLIED EDUC. (2014), <https://ignited.in/index.php/jasrae/article/view/5401>.

<sup>16</sup> *Id.*

consolidating the consensus that inclusive education is not optional but a fundamental human right. It operationalizes the principle that “ordinary schools with this inclusive orientation are the most effective means of combating discriminatory attitudes,” thereby embedding a rights-based and pedagogical rationale for structural change. Complementing this normative impetus, the Sustainable Development Goals, particularly SDG 4, commit States to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all by 2030. The SDG framework, though non-binding, has significantly influenced policy harmonization and resource mobilization. Nonetheless, critics argue that the proliferation of soft law standards has not sufficed to compel recalcitrant States to abandon entrenched segregationist practices, revealing the structural limitations of international law’s persuasive authority absent robust accountability mechanisms.<sup>17</sup>

Regional human rights systems have incrementally developed jurisprudence that reinforces inclusive education as a justiciable entitlement. For example, while the European Convention on Human Rights (ECHR) does not explicitly guarantee education for persons with disabilities, Article 2 of Protocol No. 1 (“the right to education”) has been expansively interpreted by the European Court of Human Rights (ECtHR). In *Kiss v. Hungary*, the ECtHR underscored the importance of proportionality and individual assessment, signaling that blanket exclusions violate Convention guarantees. Similarly, the African Charter on Human and Peoples’ Rights, supplemented by the Protocol on the Rights of Persons with Disabilities (adopted but pending widespread ratification), obliges State Parties to adopt measures promoting inclusive education and combating systemic discrimination. Although regional instruments vary in their normative specificity, they collectively reflect an emerging consensus that educational exclusion amounts to an egregious rights violation, subject to judicial scrutiny.

Comparative judicial practice has progressively consolidated the right to inclusive education as an enforceable norm of both domestic and international law. In *O.G. and Others v. Russia*,<sup>18</sup> the Court found that the segregation of children with disabilities in special schools, absent individualized assessment, constituted a violation of Article 14 (non-discrimination) read in conjunction with Article 2 of Protocol No. 1. Likewise, the Colombian Constitutional Court, in

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<sup>17</sup> G. Yenduri et al., *From Assistive Technologies to Metaverse: Technologies in Inclusive Higher Education*, arXiv (May 2023), <https://arxiv.org/abs/2305.11057>.

<sup>18</sup> App. No. 41159/07, Eur. Ct. H.R. (2011).

T-002/1999, held that the right to education includes the duty of reasonable accommodation, prefiguring the CRPD's ethos. These rulings collectively underscore that mere formal access does not fulfill States' positive obligations if substantive equality remains elusive. Nonetheless, the fragmentation of international and regional jurisprudence, coupled with divergent levels of incorporation into domestic legal systems, continues to pose challenges to the consolidation of a universal, enforceable standard of inclusive education. The cumulative trajectory, however, suggests a dynamic evolution toward recognition that exclusionary educational practices are incompatible with fundamental human rights.<sup>19</sup>

## INDIA'S LEGAL AND POLICY FRAMEWORK

The constitutional architecture of India is unequivocally premised on the values of substantive equality and social justice, yet its translation into the educational rights of children with disabilities remains fraught with ambivalence. Article 21A, inserted by the 86th Amendment, guarantees the right to free and compulsory education for children aged six to fourteen years. While ostensibly universal in scope, the provision has historically been operationalized in ways that fail to adequately consider the unique barriers confronting children with disabilities. Articles 14 and 15 further underscore the prohibition of discrimination & guarantee of equal protection, while Article 17 abolishes untouchability in its traditional sense but has been expansively read to encompass systemic exclusion. However, the formalistic equality underpinning much of the jurisprudence often falls short of recognizing the positive obligations upon the State to ensure reasonable accommodation and targeted support measures necessary for true inclusion. This doctrinal tension between non-discrimination & positive duty to create enabling conditions remains at the heart of India's constitutional dilemma in realizing inclusive education.<sup>20</sup>

The Rights of Persons with Disabilities Act, 2016 (RPWD Act) represents a significant normative shift by aligning domestic law with the UN Convention on the Rights of Persons with Disabilities. The Act broadens the definition of "person with disability" to encompass long-term physical, mental, intellectual, or sensory impairments that hinder full participation in society.

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<sup>19</sup> N. Mehta & M. A. Ghouse, *Expanding the Horizons of Disability Law in India from a Human Rights Perspective*, 10(21s) J. INFO. SYS. ENG'G & MGMT. (2025), <https://www.jisem-journal.com/index.php/journal/article/view/3463>.

<sup>20</sup> *Id.*

Crucially, Section 16 imposes specific obligations on the appropriate governments to ensure that children with disabilities have access to free education in an “appropriate environment” up to eighteen years of age. The statutory language recognizes reasonable accommodation, barrier-free access, and individualized support. Nevertheless, the operationalization of these obligations is impeded by persistent ambiguities in delineating enforceable rights versus aspirational policy statements. The Act stops short of mandating a uniform standard for inclusive pedagogical practices, thereby creating a normative lacuna that allows educational institutions to default to segregation or token compliance.<sup>21</sup>

The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) was lauded as a transformative framework to universalize elementary education, but its engagement with disability remains limited and fragmented. Section 3 read with the Model Rules provides that children with disabilities have the right to education “in an appropriate environment,” yet it neither articulates enforceable minimum standards of inclusion nor provides clarity on the contours of reasonable accommodation. The Act’s silence on the critical need for specially trained teachers, accessible learning materials, and assistive technology underscores a failure to internalize a rights-based understanding of disability. This legislative gap has led to jurisdictional inconsistencies and conflicting interpretations, particularly where the mandates of the RPWD Act and RTE Act intersect. Consequently, the RTE framework, rather than serving as a robust guarantee of inclusive education, has often functioned as an incomplete and ambiguously worded scaffold incapable of ensuring systemic change.

The Indian judiciary has intermittently intervened to articulate the content of the right to inclusive education. In *Union of India vs. National Federation of the Blind*,<sup>22</sup> the Supreme Court affirmed the right of visually impaired persons to access employment and education on equal terms. High Courts in Delhi, Bombay, and Karnataka have similarly issued directions to ensure accessibility in schools & provision of aids and appliances. Yet, these pronouncements, while progressive in sentiment, often lack sustained monitoring mechanisms to secure compliance. Parallely, policy initiatives such as the Sarva Shiksha Abhiyan & Inclusive Education for Disabled at Secondary Stage (IEDSS) have adopted a project-oriented approach, treating inclusion as an adjunct to mainstream education rather than its normative core. The National

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<sup>21</sup> G. C. Pal, *Disability, Social Policy and Inclusiveness: The Missing Links*, 4(2) J. Soc. Inclusion Stud. 1 (2018).

<sup>22</sup> (2013) 10 S.C.C. 772 (India).

Policy for Persons with Disabilities 2006, though pioneering at the time, is largely declaratory and suffers from weak enforcement pathways.

In *Disabled Rights Group v. Union of India*,<sup>23</sup> the petitioners challenged the failure of the government to implement provisions of the Persons with Disabilities Act, 1995, including in the field of education. The Court observed that the State carries a binding obligation to create a barrier-free environment and provide reasonable accommodation. Importantly, the Court issued specific directions requiring central and state governments to frame comprehensive schemes for access to schools, availability of trained teachers, and provision of assistive devices. Though enforcement has remained inconsistent, this judgment reinforced the idea that “appropriate environment” in education is not aspirational rhetoric but a judicially enforceable standard.

*Rajive Raturi v. Union of India*<sup>24</sup> focused on the rights of persons with visual disabilities to access information and communication technology, including accessible reading material and examination formats. While education was only one dimension of the case, the Court categorically affirmed that equality under Article 14 & right to dignity under Article 21 include the right to equitable access to educational content. The Court’s directions compelled the government to adopt accessible formats such as Braille and screen-reading software in schools and universities. The judgment is particularly significant because it shifted the discourse beyond mere physical access to encompass the right to participate meaningfully in the learning process.

## THE DILEMMA OF ACCESS IN PRACTICE

The structural barriers impeding the realization of inclusive education in India are both systemic and entrenched, manifesting in a chronic deficit of accessible infrastructure and appropriate learning materials. Despite the legislative mandate under Section 16 of the Rights of Persons with Disabilities Act, 2016 requiring all educational institutions funded or recognized by the government to provide barrier-free access, compliance remains sporadic and largely performative. Schools across rural and urban geographies frequently lack ramps, accessible toilets, tactile signage, and auditory supports, thereby rendering the physical environment inherently exclusionary. This infrastructural deficit is compounded by the dearth of adapted

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<sup>23</sup> W.P. (C) No. 11298/2004.

<sup>24</sup> W.P. (C) No. 231/2005.

pedagogical materials and assistive technologies, which are essential for students with diverse impairments to attain parity of participation. The failure to institutionalize procurement and deployment of such resource's evidences not merely administrative indifference but also a deeper normative dissonance between formal commitments and substantive equality. In this regard, the Indian framework falls short of the positive obligations articulated in Article 24 of the UNCRPD, which imposes a duty of reasonable accommodation & progressive realization of accessibility standards.<sup>25</sup>

Beyond the material dimensions of exclusion, attitudinal barriers embedded within educational ecosystems further entrench discrimination and marginalization. Teachers, often inadequately trained in inclusive pedagogy, may perceive the presence of students with disabilities as an undue burden or disruption to classroom management. Such biases, whether explicit or implicit, operate as powerful vectors of exclusion, frequently resulting in neglect, stigmatization, or unwarranted referrals to segregated institutions. Community resistance, shaped by longstanding socio-cultural prejudices associating disability with incapacity or deviance, reinforces these dynamics and impedes effective implementation of inclusive policies. This phenomenon underscores the inherent limitations of a purely legislative approach, while statutory instruments can prescribe obligations, they cannot per se dismantle entrenched social attitudes. The jurisprudential discourse around the right to education must therefore transcend formal equality and interrogate the socio-cultural contexts within which legal norms are operationalized.<sup>26</sup>

Institutional weaknesses, particularly the fragmentation of administrative responsibilities and inadequate monitoring mechanisms, have further vitiated the transformative potential of inclusive education policy. The division of jurisdiction between the Ministry of Education & Ministry of Social Justice and Empowerment has engendered duplicative schemes, conflicting mandates, & dilution of accountability. This institutional incoherence obstructs both the strategic allocation of resources & coherent delivery of services. Moreover, the paucity of reliable disaggregated data on enrolment, retention, and learning outcomes for children with disabilities severely impairs evidence-based policymaking and targeted interventions. The COVID-19 pandemic has magnified these structural deficits by precipitating a shift to digital learning

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<sup>25</sup> G. Yenduri et al., *From Assistive Technologies to Metaverse: Technologies in Inclusive Higher Education for Students with Specific Learning Difficulties*, arXiv (May 2023).

<sup>26</sup> *Id.*

modalities without adequate safeguards to prevent exclusion. The absence of accessible online platforms and assistive technologies has effectively disenfranchised large cohorts of learners with disabilities, laying bare the limitations of emergency policy responses. These failures, collectively, expose a critical need for a holistic rights-based approach that integrates legal mandates, administrative coherence, community engagement, and robust monitoring to realise the promise of inclusive education in practice.<sup>27</sup>

### **REASSESSING COMMITMENTS: COMPARATIVE PERSPECTIVES**

The Scandinavian approaches to inclusive education, particularly exemplified by Finland and Sweden, demonstrate a paradigmatic shift from deficit-oriented special education towards structural transformation of mainstream schooling. These jurisdictions have operationalized inclusive education as a legal entitlement rather than a discretionary policy objective, enshrining obligations in binding legislative instruments such as the Swedish Education Act and Finland's Basic Education Act. Under these frameworks, every learner, irrespective of impairment, is legally entitled to individualized support, differentiated pedagogy, and accessible learning environments.<sup>28</sup> Importantly, Scandinavian states have institutionalized accountability by empowering independent supervisory authorities to monitor compliance, thus avoiding the prevalent Indian scenario of rhetorical commitments unaccompanied by enforceable sanctions. The Scandinavian experience underscores the necessity of integrating inclusion within the very architecture of public education rather than relegating it to peripheral or remedial interventions, a norm that Indian law aspires to, but operationally undermines by persisting dual systems of "special" and "mainstream" institutions.

In contrast, South Africa has advanced a twin-track approach that simultaneously strengthens mainstream provision while preserving specialized settings for learners with high support needs, anchored in the White Paper 6 on Special Needs Education and reinforced through constitutional jurisprudence interpreting the right to basic education as immediately realizable. This dual commitment acknowledges the exigencies of deeply unequal socio-economic conditions while striving for progressive inclusion over time. The South African Constitutional Court has played a

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<sup>27</sup> K. Dyliaeva et al., *Challenges to Inclusive Education for Students With Disabilities in Japanese Institutions*, 14 *Higher Learning Rsch. Commun.* 1 (2024).

<sup>28</sup> *Id.*

catalytic role by interpreting the right to education as indivisible from non-discrimination and dignity, thereby obliging the state to take affirmative measures to dismantle exclusionary practices.<sup>29</sup> Australia and Canada, while not identical in approach, offer similarly instructive examples, both countries embed disability inclusion mandates within anti-discrimination statutes, the Disability Discrimination Act, 1992 (Australia) & Canadian Human Rights Act, thus enabling strategic litigation to compel compliance. These experiences illustrate that legal recognition of enforceable rights, complemented by adjudicatory mechanisms, is indispensable for transforming declaratory commitments into tangible entitlements.

For India, the feasibility of adapting such global models must be assessed with due regard to resource constraints, entrenched social stigmas, and fragmented institutional accountability. While the normative frameworks, particularly under the Rights of Persons with Disabilities Act, 2016 & Right to Education Act, 2009, share conceptual affinities with international best practices, implementation remains mired in a deficit of political will and administrative coherence. Nevertheless, the Scandinavian model's emphasis on structural inclusion and South Africa's recognition of a progressive realization trajectory offer a composite template that India could localize by incrementally strengthening mainstream provision while retaining specialized support as an interim measure. International cooperation and technical assistance, notably from UNESCO, UNICEF, & WHO, remain crucial in this regard, these bodies can facilitate knowledge transfer, capacity building, and benchmarking of progress. Yet, international assistance must not supplant domestic accountability but rather operate as a catalyst for embedding enforceable rights within India's federal governance structures and cultural milieu.<sup>30</sup>

## CONCLUSION & THE WAY FORWARD

The persistent disjunction between normative commitments and their operationalisation underscores the urgent imperative to reconceptualise inclusive education as a substantive, justiciable right rather than a mere aspirational policy directive. The Indian legal framework, while commendably incorporating the UNCRC's ethos through the Rights of Persons with Disabilities Act, 2016, remains fragmented, with the Right to Education Act, 2009 and ancillary

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<sup>29</sup> Reuben Binns & Reuben Kirkham, *How Could Equality and Data Protection Law Shape AI Fairness for People with Disabilities?*, arXiv (July 2021).

<sup>30</sup> *Id.*

schemes failing to achieve genuine systemic integration. This lacuna is compounded by structural barriers, fiscal constraints, & persistence of entrenched attitudinal prejudices that perpetuate a de facto regime of segregation and exclusion. Moving forward, the architecture of inclusive education must be undergirded by a harmonized legislative schema that unequivocally mandates reasonable accommodation, enshrines enforceable accountability mechanisms, and allocates dedicated budgetary resources commensurate with the scale of the challenge. Moreover, India's jurisprudence must evolve towards a purposive interpretation of equality and non-discrimination, embracing comparative international standards and ensuring that disabled learners are not subjected to indirect exclusion cloaked in ostensibly neutral policies. Ultimately, a transformative approach, anchored in participatory governance, empirical monitoring, and community empowerment, is indispensable to transcend the rhetorical veneer of inclusion and vindicate the constitutional promise of dignity, autonomy, and substantive equality for persons with disabilities.