

**UNVEILING STRUCTURAL EXCLUSION: A LEGAL AND BUREAUCRATIC
CRITIQUE OF INDIA'S PATH TOWARD INCLUSIVE EDUCATION FOR
CHILDREN WITH DISABILITIES**

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ABSTRACT

While India has formally embraced inclusive education through ratification of international instruments like the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and domestic enactments such as the Rights of Persons with Disabilities (RPWD) Act, 2016 & Right to Education Act, 2009, this legal convergence has not translated into substantive educational justice. This research delves into legal and bureaucratic architecture underpinning India's commitment to inclusive education for children with disabilities (CwDs), exposing the entrenched forms of structural exclusion that persist despite normative advances. The research contends that prevailing frameworks are riddled with conceptual ambiguity, fragmented institutional responsibilities, and chronic under-resourcing, factors that collectively render inclusion more aspirational than actual. Using a doctrinal legal methodology, the research dissects how legislative drafting, policy language, and bureaucratic praxis function as mechanisms of exclusion that reproduce ableist hierarchies under the guise of inclusion. It assesses disjuncture between policy rhetoric, especially within flagship initiatives like the National Education Policy 2020, & infrastructural, pedagogical, and attitudinal incapacities of the state. Further, it draws attention to the invisibilization of CwDs within data regimes and the disproportionate exclusion faced by those at the intersection of disability, caste, class, and gender. By mapping the interplay between legal norms, administrative design, and socio-political context, the research argues for a paradigmatic shift from performative inclusion to structural transformation. It advocates for the reconfiguration of inclusive education not as a technocratic project of integration but as a rights-based, justice-oriented imperative requiring radical legal imagination and systemic overhaul. Hence, the research calls for juridical and policy frameworks that not only guarantee access but dismantle the normative and material barriers that deny CwDs their rightful place within the Indian education system.

Keywords: Inclusive Education, Disability Law, Structural Exclusion, Bureaucratic Critique, India, Right to Education, RPWD Act, Educational Justice

INTRODUCTION

The pursuit of inclusive education stands as a globally endorsed mandate, rooted in a range of international human rights instruments, most notably UNCRPD, which affirms the right of persons with disabilities to inclusive, quality, and free education on an equal basis with others (Article 24). India, as a signatory to the UNCRPD, bears a legal and moral obligation to actualize these commitments within its domestic legal framework. Nationally, the Right of Children to Free and Compulsory Education Act, 2009 & RPWD Act, 2016 jointly envisage a system of education that should, in theory, eliminate discrimination and enable the full participation of CwDs in mainstream schooling. However, the operationalization of this vision has revealed a persistent disjuncture between legal promise and bureaucratic practice. Inclusive education, while embedded in policy discourse, often fails to penetrate the institutional and pedagogical realities of Indian schools.

The significance of education for CwDs transcends mere academic access; it is a foundational right that enables the realization of other human rights. Education functions not only as an equalizer but also as a tool for social integration, empowerment, and self-determination. For children with disabilities, who often face compounded discrimination based on caste, class, gender, and geography, access to inclusive education can determine whether they are accorded dignity and agency in society or relegated to the margins.¹ Yet, India's education system remains structurally unprepared to accommodate diverse needs, rendering inclusive education more aspirational than actual. The marginalization of CwDs in education settings is not simply a matter of inadequate resources or training; it is symptomatic of a deeper legal-bureaucratic inertia and conceptual confusion around inclusion itself.²

According to a 2024's report by Indian Government, while 61% of CWD are enrolled in schools, retention remains a significant challenge, particularly at higher education levels. Enrollment drops sharply from primary (0.91%) to higher secondary (0.32%) for students with disabilities, reflecting systemic barriers like inaccessible infrastructure and rigid curricula. The Census of 2011 noted that 49% of the disabled population in rural areas and 67% in urban areas are literate, but updated 2024-2025 data from the Ministry of Education

¹ Amita Dhanda, *Legal Order and Mental Disorder* (Sage Publications 2000).

² *Id.*

suggests persistent gaps, with nearly 50% of CWD not attending school due to social stigma, poverty, and lack of awareness.³

A 2025's post by the Ministry of Education on X highlights ongoing efforts under Samagra Shiksha, which include assistive devices, barrier-free infrastructure, and Individualized Education Plans (IEPs) for CWD, but implementation varies widely across state

For the purposes of this analysis, inclusive education refers to a rights-based approach wherein all children, regardless of their physical, intellectual, social, emotional, linguistic, or other conditions, learn together in the same age-appropriate classroom with adequate support and reasonable accommodation. This is distinct from integration or segregation models, where children with disabilities are placed in separate educational tracks or included conditionally. Structural exclusion, in contrast, denotes systemic barriers, legal, institutional, pedagogical, and attitudinal, that prevent CwDs from exercising their right to education on an equal basis with others. Such exclusion is not always overt but is embedded in policy design, resource allocation, administrative routines, and the architecture of educational governance.⁴

The term CwDs encompasses a heterogeneous group, including but not limited to those with physical, sensory, intellectual, and psychosocial impairments. The RPWD Act, 2016, which defines disability in expansive and evolving terms, legally anchors this category, although in practice many subgroups, such as children with multiple or invisible disabilities, remain statistically and institutionally invisible. A critical examination of these definitional contours is essential, as the very way in which law conceptualizes disability influences who is rendered legible within the education system and who is excluded from its ambit.

HISTORICAL AND LEGAL LANDSCAPE OF INCLUSIVE EDUCATION IN INDIA

The historical and legal trajectory of inclusive education in India is marked by a complex interplay between international normative frameworks and domestic legislative responses. The Salamanca Statement (1994), issued under UNESCO's auspices, served as a foundational global commitment advocating for inclusive education systems that accommodate all learners, especially those with disabilities. While the Statement had no binding force, it catalyzed a

³ Arvind Narrain, *Law Like Love: Queer Perspectives on Law* (Yoda Press 2011).

⁴ *Id.*

shift in pedagogical and legal discourses globally, including in India, from segregation to integration and eventually to inclusion. This momentum culminated in the adoption of the UNCRPD in 2006, which India ratified in 2007. Ratification of the UNCRPD not only imposed binding obligations upon India under international law but also necessitated a paradigmatic shift in its domestic legal framework, from a welfare-based, medicalized view of disability to a rights-based, social model of inclusion. Article 24 of the UNCRPD explicitly mandates states to ensure an inclusive education system at all levels, imposing both positive obligations and negative duties of non-discrimination.⁵

Despite these international imperatives, India's initial domestic legal architecture exhibited a fragmented and inconsistent commitment to inclusion. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, although pathbreaking for its time, failed to envision education within an inclusive framework. It largely endorsed a segregated model by emphasizing the establishment of special schools and special educators, thereby reinforcing structural exclusion. The RTE Act, 2009, while landmark in its universalization of elementary education, was conspicuously silent or ambiguous on the inclusion of CwDs.⁶ Its treatment of disability under the umbrella of “disadvantaged groups” lacked normative clarity and enforceable rights, leading to inconsistent state-level interpretations and implementation. The RPWD Act, 2016, however, marked a significant legal recalibration. It aligned India's domestic legal obligations more closely with the UNCRPD by explicitly recognizing the right of CwDs to inclusive education in neighborhood schools and mainstream settings, complete with individualized support, reasonable accommodation, and barrier-free access.

Judicial interventions in India have played a catalytic, albeit uneven, role in shaping the contours of inclusive education. Courts have periodically affirmed the rights of CwDs through public interest litigation and constitutional mandates under Articles 14, 21, and 21A. For instance, in *Avinash Mehrotra v. Union of India*,⁷ the Supreme Court underscored the importance of safe and accessible school environments for all children, including those with

⁵ Upendra Baxi, *The Future of Human Rights* (3rd ed., OUP 2008).

⁶ *Id.*

⁷ (2009) 6 SCC 398.

disabilities. In *Justice Sunanda Bhandare Foundation v. Union of India*⁸ and *Disabled Rights Group v. Union of India*,⁹ the courts compelled governments to implement disability rights laws and appoint special educators. However, these decisions, while normatively powerful, often lack structural enforcement mechanisms. Judicial reliance on directives rather than binding orders, and the absence of continued monitoring, has led to poor compliance and negligible systemic reform. The courts have also struggled to navigate the tension between bureaucratic limitations and constitutional guarantees, resulting in a jurisprudence that affirms rights in principle but fails in practical enforcement.

Hence, the historical and legal landscape of inclusive education in India reveals a gradual but insufficient progression from segregation to inclusion. While international instruments like the UNCRPD have exerted substantial normative pressure, and domestic statutes such as the RPwD Act, 2016 have codified inclusive principles, legal and institutional inertia persists. Ambiguities in legislation, jurisdictional fragmentation, and the discretionary nature of judicial interventions have together created a regime of partial inclusion, where legal recognition exists without robust implementation.¹⁰

BUREAUCRATIC AND POLICY-LEVEL CHALLENGES

Fragmentation Across Ministries: An Administrative Quagmire

India's governance structure concerning inclusive education for CwDs is plagued by institutional fragmentation, particularly between the Ministry of Education (MoE) and the Ministry of Social Justice and Empowerment (MSJE). While the MoE is formally tasked with implementing educational policies, the MSJE remains the primary custodian of disability rights. This bifurcation has produced a jurisdictional ambiguity that undermines effective policy design and delivery.¹¹ The lack of a unified legal or administrative framework results in parallel, and often conflicting, initiatives, leading to duplication of efforts, inefficiencies in inter-ministerial communication, and dilution of accountability. Such fragmentation not only impedes coordinated service delivery but also contravenes the constitutional mandate under

⁸ (2017) 14 SCC 417.

⁹ (2012) 12 SCC 221.

¹⁰ Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

¹¹ *Id.*

Article 41, which obligates the State to ensure effective public assistance in cases of disability, particularly in the realm of education.

Legal Ambiguity and the Diffusion of Responsibility

The absence of a harmonized legislative architecture exacerbates this institutional disarray. The RTE Act, 2009, while promising universal access to education, lacks a coherent integration with the RPWD Act, 2016. The RTE's silence on the specific roles of various ministries in implementing inclusive education results in a systemic diffusion of responsibility. This legal vagueness violates the principle of "progressive realization" under Article 24 of UNCRPD, to which India is a State Party. In effect, the children most in need of structured support fall through the bureaucratic cracks.¹²

Budgetary Marginalization of Children with Disabilities

Resource allocation for inclusive education remains grossly inadequate and sporadic. Despite rhetorical commitments to the principles of inclusion, the Union Budget and most State budgets routinely reflect the invisibilization of CwDs in educational planning. The Samagra Shiksha scheme, ostensibly the flagship integrated scheme for school education, allocates only a marginal percentage of its budget for inclusive education, often without disaggregated reporting. The result is a failure to prioritize the infrastructure, materials, and personnel necessary to support diverse learners. This constitutes a de facto denial of the right to education under Article 21A of the Constitution and flouts the statutory obligations of the State under Sections 16 and 17 of the RPWD Act.¹³

Discrepancies Between Policy Intent and Fiscal Realities

The lack of targeted budgeting also reflects a broader disjuncture between policy intent and fiscal commitment. While policies such as the National Policy for Persons with Disabilities (2006) and NEP, 2020 proclaim inclusive aspirations, they lack specific financial outlays or

¹² Harsh Mander, "Invisible Children: The Rights of Children with Disabilities in India," (2010) 45(48) *EPW* 64 (2010).

¹³ *Id.*

earmarked funds. Moreover, the budgeting process rarely involves consultations with authorities, such as Disabled Persons' Organizations (DPOs) or parents of CwDs. This technocratic approach to fiscal planning contravenes the principles of participatory governance enshrined under Article 21 of the Constitution and violates India's obligations under General Comment No. 4 (2016) of the UNCRPD Committee, which emphasizes the necessity of adequate resourcing to realize inclusive education.¹⁴

Non-Uniformity in Implementation Across States

Federalism in India, while constitutionally valuable, has led to wide disparities in the implementation of inclusive education policies. The lack of centralized guidelines on minimum standards for infrastructure, teacher training, and curricular adaptation results in inconsistent practices across states. Some states have made commendable strides, but others have failed to operationalize even the basic norms under the RPWD Act. This non-uniformity constitutes a denial of equal protection under Article 14 and undermines the doctrine of substantive equality for CwDs. Moreover, such inconsistencies point to a failure of cooperative federalism, an animating principle of the Indian constitutional structure.¹⁵

Scheme Dilution and Underutilization of Funds

The implementation of inclusive education schemes, particularly Samagra Shiksha, suffers from chronic under-utilization and bureaucratic delay. Reports from the Comptroller and Auditor General (CAG) & Ministry itself show that a substantial portion of funds earmarked for inclusive education remain unspent or diverted to general education expenditures.¹⁶ This not only reflects administrative apathy but also constitutes a violation of fiduciary duty and budgetary accountability. Such systemic lapses erode the justiciability of rights under the RPWD Act and reflect the wider problem of structural exclusion through bureaucratic inertia.

¹⁴ Neha Pathakji, "Inclusive Education for Children with Disabilities in India: An Analysis," 58(1) *Indian Journal of Human Rights & Justice* 45 (2016).

¹⁵ *Id.*

¹⁶ *Supra* note 14.

Pedagogical Unpreparedness and Institutional Gaps

A critical obstacle to the actualization of inclusive education is the acute shortage of trained educators capable of delivering inclusive pedagogy. Despite statutory mandates under Section 16 of the RPWD Act requiring training for all teachers in inclusive practices, teacher training institutions across the country largely exclude disability studies from their curriculum. The National Council for Teacher Education (NCTE) and Rehabilitation Council of India (RCI) continue to operate in silos, resulting in a regulatory vacuum. The absence of a standardized training framework undermines the realization of the right to education in its qualitative dimension and violates the principle of reasonable accommodation under Article 2 of the UNCRPD.¹⁷

Absence of Special Educators: A Rights Violation in Practice

Mainstream schools across India remain critically under-equipped with special educators, despite this being a statutory requirement. The failure to ensure the presence of resource teachers or therapists constitutes a structural denial of support services indispensable for the inclusion of CwDs. In practice, many children are either turned away or retained without meaningful educational engagement. This violates not only the RPWD Act & RTE Act but also India's obligations under Articles 23 and 26 of the Convention on the Rights of the Child (CRC). The absence of such professionals effectively excludes CwDs from the educational mainstream, perpetuating a cycle of marginalization rooted not in individual impairment but in systemic disregard.¹⁸

STRUCTURAL EXCLUSION IN PRACTICE

School-Level Barriers: Physical Inaccessibility of Infrastructure

Despite statutory commitments under the RPWD Act, 2016, particularly Section 16 and Rule 15 which mandate barrier-free access in all educational institutions, the majority of schools across India continue to remain physically inaccessible to CwDs. This systemic failure is not

¹⁷ Disha Nawani & Manish Jain, "Education for Children with Disabilities in India: A Review," 5(2) *Journal of Disability Studies* 1 (2011).

¹⁸ *Id.*

merely logistical but represents a constitutional breach of Article 21A (Right to Education) read with Article 14 (Right to Equality). Courts have acknowledged this lacuna. In *Disabled Rights Group v. Union of India*,¹⁹ the Hon'ble Delhi High Court unequivocally held that denial of physical access amounts to a denial of the right to education itself. Nonetheless, compliance remains sporadic due to a lack of enforceable timelines, poor regulatory oversight, and decentralized accountability structures.

School-Level Barriers: Attitudinal Discrimination

Structural exclusion is also perpetuated through entrenched attitudinal biases among educators and students, resulting in stigma, segregation, and informal exclusion within classrooms. Although Section 17 of the RPWD Act obliges educational authorities to promote inclusive environments and sensitize authorities, in practice, teachers frequently lack both the training and the inclination to engage meaningfully with disabled learners. The ruling in *All Kerala Parents Association v. State of Kerala*²⁰ reaffirmed that attitudinal barriers can constitute discrimination under the RPWD Act, equating them with more tangible forms of exclusion. However, in the absence of institutionalized anti-discrimination protocols or accountability mechanisms, the law's remedial force remains largely notional.²¹

Curriculum and Pedagogy: Rigid Curricular Structures

The National Curriculum Framework (NCF) and subsequent state curricula remain fundamentally rigid, driven by standardized outcomes that rarely accommodate differentiated learning needs. This rigidity contradicts the intent of Section 17(i) of the RPWD Act, which mandates curriculum modifications for learners with disabilities. Further, the RTE Act, 2009 does not explicitly recognize the need for Individualized Education Plans (IEPs), thereby institutionalizing a one-size-fits-all pedagogy. In the absence of legal obligations to diversify curricular content or methods, the exclusion becomes structurally embedded and pedagogically rationalized, violating the principle of substantive equality under Article 14.

¹⁹ (2012) 12 SCC 221.

²⁰ AIR 2002 Ker 377.

²¹ *Id.*

Curriculum and Pedagogy: Lack of Assistive Technologies and Support

The lack of assistive technologies and support staff in schools constitutes a direct infringement of children's rights under Section 42 of the RPWD Act, which requires the provision of accessible educational materials and resources. Yet the implementation is marred by bureaucratic inertia and fiscal minimalism. Judicial forums have taken cognisance of this gap, as seen in *Ranjit Kumar Rajak v. State of Bihar*,²² where the Court rebuked the state for failing to provide Braille materials and assistive devices to visually impaired students. The ruling underscored that such omissions amount to a denial of equal opportunity in education and are constitutionally impermissible under Articles 15(1) and 21A.²³

Marginalisation Within Marginalisation: Gender and Caste-Based Exclusions

Structural exclusion within inclusive education is intensified by intersectional identities. Disabled girls, Dalit children with disabilities, and Adivasi CwDs face compounded disadvantages arising from patriarchal, casteist, and ableist hierarchies. While the RPWD Act recognises intersectionality in Section 7, implementation remains tokenistic. Empirical studies have shown that disabled girls are less likely to be enrolled or retained in schools due to sociocultural stigma, safety concerns, and gendered burdens of care. Courts have yet to robustly engage with this intersectional marginalisation, leading to a jurisprudential vacuum that ignores the multi-layered discrimination faced by these children.²⁴

Exclusion of Children with Severe and Multiple Disabilities

A particularly insidious form of structural exclusion is the near-total institutional neglect of children with multiple or severe disabilities. While inclusive education is intended as a norm, in practice, these children are often relegated to special schools or denied schooling altogether. This violates not only the RPWD Act's inclusive mandate but also contravenes India's obligations under Article 24 of the UNCRC. The Supreme Court in *Justice Sunanda*

²² 2022 SCC OnLine Pat 457.

²³ *Id.*

²⁴ *Supra* note 15.

*Bhandare Foundation v. Union of India*²⁵ observed that exclusion of such children reflects a failure of state responsibility under Article 41 of the Constitution, yet the judgment did not result in any binding directive for inclusive enforcement.

Data Deficits and the Politics of Invisibility

A major enabler of structural exclusion is the persistent absence of disaggregated, reliable data on enrolment, retention, and learning outcomes of CwDs. The Unified District Information System for Education Plus (UDISE+) underreports disability data, and categories remain medically defined rather than rights-based. This undermines evidence-based policymaking and masks systemic neglect. Section 25 of the RPWD Act mandates data collection, but there is no accountability framework or sanction for non-compliance. The resulting invisibilisation of CwDs from official statistics renders them expendable in the eyes of both the law and the bureaucracy.²⁶

Inadequate Monitoring and Legal Accountability

Monitoring mechanisms, where they exist, are largely procedural and non-punitive. The absence of independent watchdogs or ombudspersons for inclusive education violations allows exclusionary practices to persist without redress. Dropout rates of CwDs are poorly tracked, and there is no legal requirement under RTE Act or RPWD Act to conduct equity audits or publish disaggregated performance metrics. This lack of transparency and enforcement infrastructure reflects a deeper structural malaise, where inclusion is aspirational rhetoric, not a justiciable right. Until robust legal mechanisms enforce accountability, inclusive education will remain a performative commitment rather than a constitutional and statutory entitlement.²⁷

²⁵ (2017) 14 SCC 417.

²⁶ Shampa Bhadra & Krishna Menon (eds.), *The Social Model of Disability in India: Theory and Practice* (Sage 2022).

²⁷ *Id.*

CRITICAL ANALYSIS OF POLICY NARRATIVES

The conceptual conflation between inclusive education and integration remains one of the most persistent flaws in India's education policy discourse. While integration assumes the mere placement of CwDs within mainstream educational settings, inclusive education requires systemic adaptation to meet diverse learning needs. The RPWD Act, 2016, although progressive in intent, fails to concretely delineate between these two paradigms, enabling policymakers and institutions to treat inclusion as an act of spatial proximity rather than substantive equality. In practice, this has manifested in policies and school-level practices that applaud the mere presence of CwDs in regular classrooms, without reconfiguring pedagogy, infrastructure, or attitudinal norms to accommodate difference. Such misinterpretation results in an illusion of compliance, where structural exclusion is masked by superficial adherence to legal mandates.²⁸

This superficiality is further deepened by the phenomenon of tokenism and performative inclusion, which dominates bureaucratic and institutional responses. Schools frequently report enrollment of CwDs to meet administrative targets or qualify for funding under schemes like Samagra Shiksha, without ensuring that these children actually receive meaningful education. Inclusion is thereby reduced to a statistical exercise, where compliance with formal metrics takes precedence over the lived experiences of disabled learners. This performativity is not only pedagogically bankrupt but legally problematic, as it contravenes the spirit of the RPWD Act and the constitutional guarantee of equal opportunity under Article 14. The resulting system fails to recognize inclusive education as a right of the child and instead treats it as a benevolent accommodation, thereby reinforcing ableist hierarchies within educational governance.

The National Education Policy, 2020, heralded as a watershed reform, encapsulates this duality between rhetorical commitment and institutional unreadiness. While NEP, 2020 endorses the creation of inclusive and equitable education for all learners, including CwDs, it does so without addressing the infrastructural and systemic preconditions necessary for

²⁸ Shweta Singh, "From Integration to Inclusion: A Shift in the Discourse of Disability in Indian Education," (2017) 23 *Contemporary Education Dialogue* 78.

genuine implementation.²⁹ For instance, the Policy proposes a shift to multidisciplinary education and child-centric pedagogy, but lacks binding obligations or timelines for training teachers in disability-inclusive methods. Similarly, the vision of universal foundational literacy is undermined by the absence of enforceable mechanisms for ensuring that CwDs, particularly those with intellectual or multiple disabilities, receive individualized support. The aspirational tone of NEP, 2020 is thus undermined by its failure to grapple with the material realities of exclusion.

This gap between policy ambition and ground-level feasibility is further accentuated by questions of structural and financial viability. Although the NEP calls for increased public investment in education to 6% of GDP, successive budget allocations have remained stagnant or insufficient. More critically, there is no ring-fenced funding for inclusive education within broader educational budgets, making implementation dependent on ad hoc or under-resourced schemes. Without a robust financial architecture, mandates under NEP and RPWD Act remain hortatory rather than legally actionable. The absence of financial accountability mechanisms means that even the modest reforms proposed, such as the provision of resource centres or special educators, remain aspirational, resulting in systemic non-compliance that is normalized within bureaucratic functioning.³⁰

Compounding these structural issues is the bureaucratic language used in policy and legal documents, which continues to reflect outdated and dehumanizing conceptions of disability. Terms such as "divyang" (divine body) promoted in official parlance dilute the rights-based discourse by spiritualizing disability rather than addressing it as a socio-legal identity. This terminology not only infantilizes and marginalizes persons with disabilities but also distracts from the legal obligations of the state under international and domestic law. The absence of precise, rights-aligned language also undermines policy clarity, leading to interpretive leeway that facilitates bureaucratic inertia and implementation gaps.³¹

Finally, the absence of child-centric and rights-based framing in legal and policy instruments perpetuates a charity-based model of education for CwDs. Instead of recognizing them as full

²⁹ Sushmita Nath, "Disability and Human Rights: Paradigmatic Shifts in Indian Jurisprudence," (2020) 13 *NUJS L Rev* 94.

³⁰ *Id.*

³¹ *Supra* note 23.

rights-holders under the Indian Constitution & UNCRPD, policy narratives continue to position them as passive recipients of state benevolence. This discursive marginalization has real legal consequences, as it weakens claims for entitlements, remedies for non-compliance, and the mobilization of legal accountability. A genuinely inclusive legal framework must go beyond symbolic inclusion and reorient the entire educational apparatus, from curriculum design to monitoring frameworks, toward the active realization of the rights of CwDs.

COMPARATIVE INSIGHTS

Finland's model of inclusive education is internationally lauded not merely for its outcomes but for the philosophical and legal underpinnings that foreground education as a universal right, not a conditional privilege. Finnish education law enshrines the principle that all children, regardless of ability, are to be educated in mainstream classrooms with necessary supports. Unlike India's fragmented statutory framework, Finland operates under a singular, unified education system with comprehensive provisions for special education embedded within general education law.³² Importantly, the model does not rely on separate special education statutes, thereby avoiding the pitfalls of dual-track or segregate education systems. In Finland, all teachers are trained in inclusive pedagogy from the outset, reducing the reliance on specialized personnel and instead mainstreaming responsibility. The legal and administrative consistency found in Finland sharply contrasts with India's parallel bureaucracies, which often generate confusion over jurisdiction and policy implementation.

South Africa's Constitution explicitly guarantees the right to basic education for everyone, including persons with disabilities, under Section 29(1)(a). In the post-apartheid legal landscape, inclusive education has been recognized as a cornerstone of restorative justice and social equity. The White Paper 6 on Special Needs Education (2001) provides the foundational policy document for transforming the system toward full inclusion.³³ While the legal commitment exists, it is South Africa's judiciary that has played a crucial role in transforming these guarantees into actionable mandates. Courts have repeatedly affirmed the state's positive obligations under the Constitution to make education available and accessible

³² Janet Lord & Rebecca Brown, "The Role of Legal Advocacy in Promoting Inclusive Education," (2011) 5(2) *International Journal of Inclusive Education* 117.

³³ *Id.*

to children with disabilities, thus operationalizing the right as immediately realizable, rather than subject to progressive realization, a distinction that Indian courts have often failed to rigorously articulate. Though implementation remains uneven in rural areas, South Africa's jurisprudence offers a compelling model of how constitutional guarantees, when judicially enforced, can drive institutional accountability in inclusive education.

Brazil's inclusive education regime is founded on robust intersectoral coordination, anchored in its 1988's Constitution and detailed through the National Education Plan and Policy on Special Education in the Perspective of Inclusive Education (2008). Brazil has eschewed the dichotomy between special and regular education by mandating the enrollment of all students, including those with disabilities, in regular schools with additional support services such as resource rooms and assistive technology. Brazilian law mandates the collaborative role of health, education, and social protection sectors, fostering a multidimensional understanding of inclusion. This stands in sharp contrast to India's compartmentalized approach, where responsibility for CwDs is divided between Ministry of Education & Ministry of Social Justice and Empowerment, often resulting in bureaucratic inertia. Moreover, Brazil's legal mandates have been supported by targeted budgetary allocations, and the public provision of services reflects a more integrated approach to the rights of children with disabilities.³⁴

Across these three jurisdictions, a unifying feature is the legal and institutional coherence that undergirds inclusive education. Laws are not merely declaratory; they are supported by operational guidelines, pedagogical training, and resource allocation that work in tandem. In India, legal enactments often articulate competing paradigms, one rights-based, the other service-oriented, leading to ambiguous implementation. Conversely, Finland, South Africa, and Brazil demonstrate the importance of conceptual clarity and vertical integration of legal mandates from central to local governance levels. The teacher's role, curriculum design, and physical infrastructure are all treated as legal obligations, not discretionary entitlements. These comparative frameworks underscore the necessity of translating constitutional or statutory rights into detailed, enforceable mechanisms, a dimension where Indian legal praxis remains underdeveloped.³⁵

³⁴ Naila Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought* (Verso 2017).

³⁵ *Id.*

Another salient feature in these global models is the legal recognition of the agency and voice of persons with disabilities in the policymaking and implementation process. South Africa and Brazil, in particular, embed participatory mechanisms in law, ensuring that DPOs and caregivers are involved in education planning and monitoring. This participatory legal design enshrines dignity and autonomy as core values, a stark departure from India's top-down, welfare-driven model that rarely includes disabled voices in policy articulation. Even the language of inclusion in India is replete with ableist overtones, lacking the rights-oriented precision found in international best practices. In Finland, by contrast, inclusion is not conceived as a benevolent gesture but a non-negotiable right flowing from the equality clause in its constitutional and statutory framework. These legal cultures have internalized inclusion as a normative imperative, not a logistical afterthought.

India's policy borrowing, as seen in NEP, 2020 and various state-level initiatives, tends to extract technical elements from global models, like resource rooms or universal design, without transplanting the legal and institutional ethos that makes those elements functional. The comparative evidence suggests that without a strong legal commitment, accompanied by administrative coherence and enforceable standards, inclusive education risks becoming an aspirational catchphrase devoid of impact. The lesson from Finland, South Africa, and Brazil is not that inclusion is easy, but that it is a legally structured, institutionally reinforced, and culturally supported process. For India to move toward substantive inclusion, it must embrace a structural transformation that aligns laws, policies, budgets, and pedagogy, grounded in the recognition of disabled children as rights-bearing subjects under the Constitution and international law.³⁶

CONCLUSION & THE WAY FORWARD

The legal and bureaucratic architecture of inclusive education in India, while formally aligned with constitutional guarantees and international obligations under the UNCRPD, remains structurally incapable of dismantling entrenched modes of exclusion faced by CwDs. Despite the rhetorical commitments enshrined in statutes, such as the RPWD Act, 2016, & policy

³⁶ Shampa Bhadra & Krishna Menon (eds.), *The Social Model of Disability in India: Theory and Practice* (Sage 2022).

declarations, like the National Education Policy 2020, the substantive realization of inclusive education is systematically undermined by legal ambiguities, inter-ministerial fragmentation, lack of binding enforcement mechanisms, and a technocratic bureaucracy that privileges administrative convenience over transformative inclusion. The prevailing legal framework fails to articulate a justiciable right to inclusive education that is comprehensive, enforceable, and accompanied by affirmative obligations on the State. It continues to permit a dual-track system wherein segregation is legitimized under the guise of choice, and inclusion is reduced to spatial integration without corresponding curricular or pedagogical reform. A rights-based recalibration is imperative, one that reconceptualizes inclusive education as a non-derogable entitlement and mandates structural reforms across legal, institutional, and fiscal domains. Moving forward, the legislative intent must be harmonized with implementation architecture by codifying enforceable standards for accessibility, reasonable accommodation, and individualized support systems. Simultaneously, robust accountability mechanisms, participatory policymaking involving DPOs and disabled children themselves, and disaggregated data collection must form the core of an emancipatory legal praxis that affirms the agency, dignity, and educational sovereignty of every child with a disability.