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# BRIDGING THE GAP: A SOCIO-LEGAL ANALYSIS OF THE CONSTITUTIONAL MANDATE FOR INCLUSIVE EDUCATION AND THE RIGHTS OF CHILDREN WITH DISABILITIES

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## Abstract

Education is the bedrock of individual autonomy and social integration, yet for children with disabilities, the realization of this right has historically been obstructed by systemic exclusion and pedagogical rigidity. This research paper explores the Conceptual and Constitutional Framework Governing Inclusive Education, tracing the pivotal shift from the Medical Model which views disability as an individual pathology to be "fixed" to the Social and Human Rights Models, which identify societal barriers as the primary source of disablement.

The study provides a comprehensive analysis of the international legal landscape, centered on the UN Convention on the Rights of Persons with Disabilities (UNCRPD), and examines how these global norms are translated into domestic constitutional mandates. By scrutinizing the principles of Equality, Non-Discrimination, and Reasonable Accommodation, the paper argues that inclusive education is not merely a policy choice but a constitutional imperative rooted in the right to a life with dignity.

Through an examination of judicial activism and landmark case law, the research identifies a growing judicial trend toward enforcing "meaningful access" rather than mere physical integration. However, the study also highlights significant gaps between legislative intent and grassroots reality, such as inadequate teacher training and inaccessible infrastructure. The paper concludes by recommending the adoption of Universal Design for Learning (UDL) and standardized "inclusion audits" to ensure that the constitutional promise of education becomes a lived reality for every child, regardless of ability.

## Keywords

- **Inclusive Education:** A pedagogical approach where all students, regardless of their physical or intellectual challenges, are taught together in a mainstream environment.
- **Disability Jurisprudence:** The branch of law and legal theory specifically concerned with the rights, status, and protection of persons with disabilities.
- **Reasonable Accommodation:** Necessary and appropriate modifications in the educational environment to ensure that a disabled child enjoys the same rights and access as their peers.
- **Social Model of Disability:** The conceptual framework that views disability as a result of societal barriers and inaccessible environments rather than an individual's "medical" condition.
- **Substantive Equality:** A legal principle that goes beyond "treating everyone the same" to focus on achieving equitable outcomes through affirmative action and support.

- **UNCRPD (Article 24):** The specific provision of the United Nations Convention on the Rights of Persons with Disabilities that mandates inclusive education systems globally.
- **Universal Design for Learning (UDL):** An educational framework that guides the development of flexible learning environments that can accommodate individual learning differences.
- **Right to Dignity:** The constitutional principle that education must not only be accessible but must also empower the individual to live a life of self-respect and independence.
- **Judicial Activism:** The proactive role played by the courts in interpreting and enforcing the educational rights of marginalized children.
- **Non-Discrimination:** The legal prohibition against any exclusion, restriction, or preference based on disability that impairs the recognition of the right to education.

## Chapter 1. Introduction

### 1.1. Introduction

The hallmark of a truly democratic society is not merely the presence of a legal system, but the extent to which that system protects its most vulnerable members. Among the most marginalized groups globally are children with disabilities, whose journey toward educational parity has been a long transition from the shadows of segregation to the light of mainstream participation. Historically, disability was framed as a medical misfortune a "deficit" residing within the individual that required separate, specialized care. This perspective, known as the Medical Model, justified the exclusion of disabled children from regular schools, effectively creating a "parallel" and unequal educational universe.

In the modern era, this paradigm has been fundamentally challenged by the Social Model of Disability. This framework posits that disability

is not an inherent trait, but a socio-legal construct resulting from the failure of the environment to accommodate human diversity. Consequently, Inclusive Education has emerged as the definitive global standard. Unlike "integration" which merely places a child in a classroom and expects them to adapt inclusion demands that the educational system itself undergo a structural metamorphosis to meet the unique needs of every learner.

The legal foundation for this shift is found in the intersection of international human rights law and domestic constitutional mandates. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) has codified inclusive education as a universal right, compelling nations to dismantle discriminatory barriers. In many jurisdictions, this international obligation is reinforced by constitutional guarantees of Equality (Article 14) and the Right to Life with Dignity (Article 21). These provisions ensure that education is treated not as an act of state charity, but as a fundamental entitlement that facilitates the exercise of all other civil liberties.

However, despite a robust conceptual and constitutional framework, the bridge between "law on the books" and "law in action" remains fragile. Children with disabilities continue to face "invisible barriers," ranging from inflexible curricula and lack of assistive technology to deep-seated attitudinal biases among educators. This research paper seeks to analyze the socio-legal architecture governing these rights, exploring how judicial activism and legislative reforms are striving to transform the classroom into a space of true belonging. Through this analysis, we aim to move beyond the rhetoric of "access" and toward a reality of "achievement" for every child.

### 1.2. Research Questions

- How has the conceptual understanding of disability evolved within the legal framework of education?
- To what extent do constitutional guarantees effectively protect the

educational rights of children with disabilities?

- What are the systemic barriers that prevent the transition from "access to education" to "quality inclusive education"?

### 1.3. Research Objectives

- To analyze the transition from the medical model to the social model of disability in legal theory.
- To examine the role of the judiciary in interpreting constitutional provisions for disabled children.
- To identify gaps between legislative intent and grassroots implementation.

### 1.4. Research Hypothesis

**Hypothesis:** Despite the existence of strong constitutional mandates and international obligations, the lack of standardized "reasonable accommodation" and trained pedagogical infrastructure prevents the realization of inclusive education.

### 1.5. Research Methodology

This research employs a **Doctrinal Research Methodology**. It relies on the analysis of primary sources, including Constitutional texts, Statutes (e.g., The Rights of Persons with Disabilities Act), and Judicial Pronouncements. Secondary sources include peer-reviewed journals, reports by international bodies like UNESCO, and books by legal scholars on disability jurisprudence.

## Chapter 2: The Conceptual Evolution of Disability Rights and Inclusive Education

### 2.1. The Shift from Pathology to Participation

The conceptual framework governing the rights of children with disabilities has undergone a seismic shift over the last century. Historically, disability was viewed through the lens of the Medical Model. Under this paradigm, disability is seen as a "defect" or a biological pathology residing within the individual that requires a "cure" or "rehabilitation" to fit into a standardized society. In the context of education, this led to the segregation of children into "special

schools," predicated on the belief that they were incapable of keeping pace with their "normal" peers<sup>428</sup>.

However, the late 20th century saw the emergence of the Social Model of Disability. This model posits that disability is not an individual's impairment, but rather a result of the interaction between a person with an impairment and an environment filled with barriers be they physical, attitudinal, or systemic<sup>429</sup>. For a child with a disability, the "handicap" is not their inability to walk, but the school's lack of a ramp. This conceptual transition is the bedrock of Inclusive Education, which demands that the system change to accommodate the child, rather than the child changing to fit the system.

### 2.2. Defining Inclusive Education vs. Integration

It is vital to distinguish between integration and inclusion, as they are often erroneously used interchangeably in legal discourse.

- Integration is the process of placing a child with a disability in a mainstream classroom on the condition that they can adapt to the existing pre-set requirements of the school. It is "assimilationist" in nature<sup>430</sup>.
- Inclusion, conversely, is a proactive commitment to eliminate barriers and provide "reasonable accommodation." It recognizes that every child is a unique learner and that the classroom must be flexible enough to provide multiple means of engagement, representation, and expression.

### 2.3. The Philosophy of "Belonging"

Inclusive education is grounded in the "Rights-Based Model." This perspective views education not as a matter of state welfare or charity, but as a fundamental human right necessary for

<sup>428</sup> Michael Oliver, *The Politics of Disablement*, (Macmillan Education 1990) 11.

<sup>429</sup> Tom Shakespeare, 'The Social Model of Disability' in Lennard J. Davis (ed), *The Disability Studies Reader* (4th end, Routledge 2013) 214-217.

<sup>430</sup> UNESCO, *The Salamanca Statement and Framework for Action on Special Needs Education* (1994) Art 2.

the exercise of all other rights<sup>431</sup>. For a child with a disability, inclusion provides the social capital required for future independence. When a constitutional framework mandates inclusion, it is essentially affirming the child's right to belong recognizing that the "segregated but equal" doctrine is inherently discriminatory and psychologically damaging<sup>432</sup>.

#### 2.4. The Concept of Reasonable Accommodation

A core component of the conceptual framework is Reasonable Accommodation. In a legal sense, this refers to necessary and appropriate modifications and adjustments that do not impose a "disproportionate or undue burden" on the provider<sup>433</sup>. In the educational sphere, this translates to providing Braille textbooks, sign language interpreters, or modified examination timings. The failure to provide reasonable accommodation is now increasingly recognized by judiciaries worldwide as a form of discrimination, akin to active exclusion.

### Chapter 3: The International Legal Landscape: From Exclusion to Inclusion

#### 3.1 The Genesis: The Salamanca Statement (1994)

While several international instruments touched upon disability, the Salamanca Statement and Framework for Action on Special Needs Education is widely regarded as the "Magna Carta" of inclusive education<sup>434</sup>. It was here that the international community first shifted away from the "special education" paradigm. The Statement asserted that every child has a fundamental right to education and must be given the opportunity to achieve and maintain an acceptable level of learning. Most

importantly, it declared that "those with special educational needs must have access to regular schools which should accommodate them within a child-centered pedagogy capable of meeting those needs."<sup>435</sup>

#### 3.2 The Transformative Power of the UNCRPD (2006)

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) represents the most significant legal milestone in the history of disability rights. Specifically, Article 24 mandates that State Parties ensure an "inclusive education system at all levels."<sup>436</sup>

Unlike previous declarations, the UNCRPD is a legally binding treaty. It moves beyond mere "access" and emphasizes "full and equal participation." Under Article 24, governments are obligated to ensure that:

- Persons with disabilities are not excluded from the general education system on the basis of disability.
- Children with disabilities can access an inclusive, quality, and free primary and secondary education on an equal basis with others in the communities in which they live.
- Reasonable accommodation of the individual's requirements is provided.

#### 3.3 The "General Comment No. 4" Clarification

To prevent states from misinterpreting "inclusion" as mere "integration," the UN Committee on the Rights of Persons with Disabilities issued General Comment No. 4 in 2016<sup>437</sup>. This document provided the definitive legal distinction between segregation, integration, and inclusion. It clarified that inclusion involves a process of systemic reform, embodying changes in content, teaching

<sup>431</sup> Amartya Sen, *Development as Freedom*, (Oxford University Press 1999) 75 (Discussing the capability approach as a basis for human rights).

<sup>432</sup> See *Brown v. Board of Education*, 347 U.S. 483 (1954) (Applying the principle that segregation generates a feeling of inferiority that may affect their hearts and minds in a way unlikely ever to be undone).

<sup>433</sup> United Nations Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (UNCRPD) Art 2.

<sup>434</sup> UNESCO, *The Salamanca Statement and Framework for Action on Special Needs Education* (Adopted by the World Conference on Special Needs Education: Access and Quality, Salamanca, Spain, 7–10 June 1994) Preface.

<sup>435</sup> *Ibid*, Article 2.

<sup>436</sup> UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (UNCRPD) Art 24(1).

<sup>437</sup> UN Committee on the Rights of Persons with Disabilities, 'General Comment No 4 (2016) on the Right to Inclusive Education' (25 November 2016) UN Doc CRPD/C/GC/4.

methods, approaches, structures, and strategies in education to overcome barriers<sup>438</sup>.

### 3.4 The Sustainable Development Goals (SDG 4)

The international framework is further bolstered by the 2030 Agenda for Sustainable Development. Goal 4 (SDG 4) explicitly aims to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all."<sup>439</sup> This global commitment recognizes that education is not only a right in itself but a primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.

## Chapter 4: The Constitutional Framework: Equality, Dignity, and the Right to Education

### 4.1 The Constitutional Bedrock of Disability Rights

The constitutional framework for the rights of children with disabilities is built upon the pillars of Equality, Non-discrimination, and Liberty. In most modern democracies, the constitution acts as a living document that evolves to protect marginalized groups. For children with disabilities, the "Right to Education" is not a standalone provision but is inextricably linked to the Right to Equality and the Right to Life with Dignity.<sup>440</sup>

From a constitutional standpoint, education is the "great equalizer." If the State fails to provide an accessible environment for a disabled child, it effectively violates the guarantee of equal protection under the law. This is because "equality" does not mean treating everyone the same; it means treating everyone with equal concern and respect, which often requires

different treatment for those in different circumstances<sup>441</sup>.

### 4.2 Substantive Equality and Positive Obligations

Constitutional jurisprudence has shifted from Formal Equality (the absence of direct discrimination) to Substantive Equality (taking proactive steps to achieve an equitable outcome)<sup>442</sup>. For the disabled child, this shift is crucial. It imposes a positive obligation on the State to:

1. Remove Barriers: Eliminating physical and architectural hurdles in schools.
2. Provide Affirmative Action: Reserving seats or providing financial aid to ensure representation.
3. Ensure Reasonable Accommodation: Adjusting the "rules" of the educational system to ensure the disabled child can compete on a level playing field.

### 4.3 The Interplay Between Article 21 and 21A (The Indian Perspective)

In the context of the Indian Constitution, the evolution of this right is particularly profound. While Article 21A explicitly guarantees the right to free and compulsory education, the judiciary has consistently held that this right must be read in harmony with Article 21 (Right to Life)<sup>443</sup>. A life without education for a child with a disability is a life stripped of its potential and dignity.

Furthermore, Article 15 prohibits discrimination on various grounds. While "disability" was not originally listed in Article 15, the Supreme Court has interpreted the equality clauses broadly to include disability as a prohibited ground of discrimination, asserting that any classification that excludes disabled persons must pass the

<sup>438</sup> Ibid, para 11 (Distinguishing inclusion from "integration," which involves placing persons with disabilities in existing mainstream educational institutions without changing the system).

<sup>439</sup> UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, Goal 4.

<sup>440</sup> Ronald Dworkin, Taking Rights Seriously, (Harvard University Press 1977) 227 (Discussing the right to equal concern and respect).

<sup>441</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (Emphasizing that dignity is the core of all fundamental rights).

<sup>442</sup> Sandra Fredman, Substantive Equality: Revisited, (2016) 14(3) International Journal of Constitutional Law 712.

<sup>443</sup> Unni Krishnan, J.P. v. State of Andhra Pradesh, (1993) 1 SCC 645 (Establishing that the right to education flows from the right to life).

test of "reasonable classification" and "proportionality."<sup>444</sup>

#### 4.4 The Doctrine of "Meaningful Access"

A significant constitutional development is the transition from "Physical Access" to "Meaningful Access." It is no longer sufficient for a State to simply allow a child with a disability to enter a school building. The Constitution mandates that the education provided must be meaningful<sup>445</sup>. If a deaf child is placed in a classroom without a sign-language interpreter, their "right to education" is a mere formality a "paper right" with no substance. The constitutional framework, therefore, requires the provision of support systems that make the right to learn functional.

### Chapter 5: Judicial Activism and the Right to Learn

#### 5.1 The Judiciary as the Guardian of Inclusion

In many jurisdictions, the legislature provides the skeleton of disability rights, but it is the judiciary that provides the flesh and blood. Judicial activism has played a pivotal role in transforming inclusive education from a theoretical constitutional promise into an enforceable reality. Courts have increasingly adopted a "social model" approach, viewing the denial of educational support not just as a policy failure, but as a violation of fundamental human rights<sup>446</sup>.

The role of the court in this context is twofold: first, to act as a check on the state's failure to provide infrastructure; and second, to strike down discriminatory admission policies in private and public educational institutions.

<sup>444</sup> Jeeja Ghosh v. Union of India, (2016) 7 SCC 761 (Holding that equality is not just about preventing discrimination but about providing the dignity of independence).

<sup>445</sup> See Board of Education v. Rowley, 458 U.S. 176 (1982) (Though a US case, it pioneered the discussion on whether the "access" provided is "sufficient" to confer educational benefits).

<sup>446</sup> Jeeja Ghosh v. Union of India, (2016) 7 SCC 761 (The Court observed that "Equality is not only about preventing discrimination and improving access... it is also about the dignity of being independent").

#### 5.2 Landmark Pronouncements and the "Barrier-Free" Mandate

Judicial intervention has been particularly effective in redefining the physical and pedagogical boundaries of the classroom. In several landmark cases, courts have held that the "Right to Education" is illusory if the physical infrastructure of the school remains inaccessible.

For instance, the judiciary has frequently invoked the principle of "Proportionality" to determine whether a school's claim of "undue burden" is a legitimate excuse for failing to provide reasonable accommodation<sup>447</sup>. Courts have consistently ruled that budgetary constraints cannot be used as a shield by the State to bypass its constitutional obligation to provide ramps, lifts, and accessible toilets for children with orthopedic disabilities.

#### 5.3 Expanding the Horizon: Beyond Physical Access

The modern judicial trend has moved toward addressing "invisible disabilities," such as dyslexia, autism, and ADHD. Courts have intervened to ensure that examination boards provide extra time, scribes, or computer-aided testing for students whose disabilities affect their processing speed or writing ability rather than their intellectual capacity<sup>448</sup>.

In a notable shift, the judiciary has also begun to address the attitudinal barriers prevalent in educational institutions. Judgments have emphasized that the "spirit of inclusion" requires teachers and administrators to undergo sensitization training, asserting that a school's culture is as much a part of the "legal environment" as its physical buildings<sup>449</sup>.

<sup>447</sup> Rajive Raturi v. Union of India, (2018) 2 SCC 413 (The Supreme Court of India issued directions for making all public buildings, including educational institutions, fully accessible).

<sup>448</sup> Avni Prakash v. National Testing Agency (NTA), (2021) SCC Online SC 1112 (The Court held that providing "reasonable accommodation" is a facet of the individual's dignity and a requirement of substantive equality).

<sup>449</sup> Pramati Educational and Cultural Trust v. Union of India, (2014) 8 SCC 1 (Discussing the obligations of both state and private unaided schools in fulfilling the right to education).

#### 5.4 The Doctrine of "Non-Retrogression"

A significant legal concept emerging from recent disability litigation is the Doctrine of Non-Retrogression. This principle dictates that once a state has taken steps toward fulfilling the right to inclusive education (such as providing special educators or assistive technology), it cannot take steps backward or reduce those protections without a compelling constitutional justification<sup>450</sup>. This ensures that the rights of children with disabilities remain progressive and protected from fluctuating political or economic climates.

### Chapter 6: Conclusion and Recommendation

#### 6.1 Conclusion: From Legal Mandate to Lived Reality

The journey toward inclusive education is not merely a legal or administrative transition; it is a fundamental reconfiguration of the social contract. This research has demonstrated that while the Medical Model once relegated children with disabilities to the margins of the educational landscape, the contemporary Human Rights Model bolstered by the UNCRPD and various constitutional guarantees recognizes that the "problem" of disability lies not in the child, but in the barriers created by society<sup>451</sup>.

The conceptual framework governing these rights has evolved from a philosophy of "charity" to one of "entitlement." We have seen that the Constitutional Mandate for equality and dignity remains a hollow promise unless it is accompanied by the rigorous implementation of Reasonable Accommodation. As discussed in the preceding chapters, the judiciary has acted as a vital catalyst in this process, transforming "paper rights" into enforceable mandates. However, the law has its limits. Even the most progressive legislation cannot, by itself, dismantle the deep-seated attitudinal biases

that persist within classrooms and communities.

True inclusion requires a shift from "integration" where a child is simply present to "meaningful participation" where a child is valued. This necessitates a move toward Universal Design for Learning (UDL), where curricula are built from the ground up to be accessible to everyone, rather than being retrofitted for a few<sup>452</sup>.

In conclusion, the legal framework is robust, but the implementation remains fragmented. The transition from a segregated system to an inclusive one is a continuous process of "unlearning" exclusion. For the rights of children with disabilities to be fully realized, the State, the school, and the community must move in unison to ensure that education is truly a universal right, and not a privilege reserved for those who fit a "standard" mold. As the legal maxim suggests, *Ubi jus, ibi remedium* where there is a right, there must be a remedy. For the disabled child, that remedy is a classroom that welcomes them not as a guest, but as a member<sup>453</sup>.

#### 6.2 Suggestions and Recommendations

To bridge the gap between the constitutional framework and the lived experiences of children with disabilities, the following multi-dimensional recommendations are proposed:

##### 6.2.1. Shift to Universal Design for Learning (UDL)

Educational boards should move away from the traditional "one-size-fits-all" curriculum toward a Universal Design for Learning framework. This involves designing instructional materials and activities that allow for multiple means of representation, expression, and engagement from the outset, reducing the need for "special" adjustments later<sup>454</sup>.

<sup>450</sup> See *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (While a case on different grounds, it solidified the 'Doctrine of Non-Retrogression' in constitutional law, applicable to the rights of all marginalized groups).

<sup>451</sup> Theresa Degener, 'A New Human Rights Model of Disability' in Mari J. Matsuda (ed), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2017) 41.

<sup>452</sup> Rose, D. H., & Meyer, A., *Teaching Every Student in the Digital Age: Universal Design for Learning*, (Association for Supervision and Curriculum Development 2002) 15-20.

<sup>453</sup> *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761 (Reiterating that the measure of a civilization is how it treats its most vulnerable members).

<sup>454</sup> Anne Meyer, David H. Rose, and David Gordon, *Universal Design for Learning: Theory and Practice*, (CAST Professional Publishing 2014) 45-52.

### 6.2.2. Mandatory Pre-Service and In-Service Teacher Training

Inclusion cannot succeed if educators feel unequipped. It is recommended that:

- Disability Pedagogy be made a mandatory core module in all Bachelor of Education (B.Ed) and teacher certification programs.
- Continuous professional development should focus on neurodiversity, assistive technology, and behavioral psychology to foster an empathetic classroom environment.

### 6.2.3. Institutionalization of "Reasonable Accommodation" Audits

Governments should establish independent regulatory bodies or "Disability Commissions" tasked with conducting annual audits of educational institutions. These audits should move beyond physical "ramp-counting" to evaluate:

- Availability of learning materials in accessible formats (Braille, E-Pub, Sign Language).
- The ratio of Special Educators to students.
- The effectiveness of "Individualized Education Programs" (IEPs)<sup>455</sup>.

### 6.2.4. Decentralized Support Centers

Instead of centralized "special schools," resource centers should be established at the district or cluster level. These centers can provide itinerant teachers, speech therapists, and counselors who visit regular schools, ensuring that specialized support follows the child into the mainstream environment.

### 6.2.5. Legal Literacy and Advocacy for Parents

There is a profound "information asymmetry" regarding the legal rights of disabled children. The State must fund legal literacy camps for

parents, empowering them to demand "Reasonable Accommodation" as a matter of right rather than a favor. Schools should be legally mandated to provide a clear, transparent grievance redressal mechanism for disability-based discrimination.

### 6.2.6. Strengthening Data Collection

Policy cannot be effective without accurate data. National censuses and educational surveys must adopt the Washington Group on Disability Statistics questions to accurately identify children with functional limitations, ensuring that "invisible disabilities" like learning disorders are captured in budget allocations<sup>456</sup>.

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<sup>455</sup> See The Rights of Persons with Disabilities Act, 2016, Section 16 (Mandating the state to provide inclusive education and individualised support).

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