

ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES IN INDIA: THE LEGAL FRAMEWORK AND REMEDIES

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Abstract

Access to justice is a fundamental human right that is essential for promoting equality, protecting rights, and ensuring accountability. However, for persons with disabilities in India, accessing justice is often a significant challenge due to various legal, physical, and attitudinal barriers.

In India, in addition to the Constitution, the Rights of Persons with Disabilities Act, 2016 (RPWD Act 2016) is the primary law governing access to justice for people with disabilities in India. The RPWD Act 2016 provides for the protection of the rights and dignity of persons with disabilities and includes provisions for accessibility, non-discrimination, and reasonable accommodations.

The aim of this paper is to explore the legal framework governing access to justice for people with disabilities in India and examine the challenges they face in accessing the justice system. This paper also aims to discuss potential solutions to improve access to justice for people with disabilities in India.

Keywords: Access to justice, Persons with Disabilities, Rights, Barriers, Solutions

INTRODUCTION

Access to justice is a fundamental human right that is essential for promoting equality, protecting rights, and ensuring accountability. However, for people with disabilities in India, accessing justice is often a significant challenge due to various legal, physical, and attitudinal barriersⁱ. In this article, we will explore the legal framework governing access to justice for people with disabilities in India and examine the challenges they face in accessing the justice system. We will also discuss potential solutions to improve access to justice for people with disabilities in India.

The legal framework for access to justice for people with disabilities in India includes several laws, policies, and guidelines. The Constitution of India guarantees equal protection of laws and prohibits discrimination based on disability. [The Rights of Persons with Disabilities Act, 2016](#), provides for the protection of the rights and dignity of persons with disabilities and includes provisions for accessibility, non-discrimination, and reasonable accommodations. However, despite these legal protections, people with disabilities in India continue to face significant barriers when accessing the justice system.

One of the main challenges faced by people with disabilities in accessing the justice system in India is the lack of accessibility. Many courts, police stations, and other justice institutions are not designed to be accessible for people with disabilities, particularly those with mobility, visual, or hearing impairments. Communication barriers, such as a lack of sign language interpreters or accessible information, can also prevent people with disabilities from accessing the justice system. Moreover, many people with disabilities are not aware of their rights and the legal mechanisms available to them, leading to a lack of empowerment and representation.ⁱⁱ

Ensuring access to justice for people with disabilities in India is crucial for promoting human rights, equality, and inclusion. While the legal framework for access to justice for people with disabilities is in place, much remains to be done to address the challenges faced by people with disabilities in accessing the justice system. By adopting inclusive and accessible practices and providing support services and accommodations, India can work towards ensuring that people with disabilities have equal access to justice.ⁱⁱⁱ

CURRENT LEGAL FRAMEWORK

The legal framework for access to justice for people with disabilities in India includes various laws, policies, and guidelines. In this section, we will explore the key legal instruments that govern access to justice for people with disabilities in India.

The Constitution of India guarantees the right to equality, non-discrimination, and equal protection of laws to all citizens, including people with disabilities. Article 14 of the Constitution^{iv} provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Moreover, Article 15^v prohibits discrimination on the basis of religion, race, caste, sex, or place of birth, while Article 21^{vi} provides for the right to life and personal liberty. These provisions apply to people with disabilities and form the basis for their rights to access justice.

In addition to the Constitution, the Rights of Persons with Disabilities Act, 2016 (RPWD Act)^{vii} is the primary law governing access to justice for people with disabilities in India. The RPWD Act provides for the protection of the rights and dignity of persons with disabilities and includes provisions for accessibility, non-discrimination, and reasonable accommodations. It recognizes the right of persons with disabilities to access justice on an equal basis with others, including the right to a fair and impartial trial, the right to legal aid and assistance, and the right to access alternative dispute resolution mechanisms.

The RPWD Act 2016 also mandates the provision of certain accommodations and facilities to persons with disabilities in the justice system. Section 31^{viii} requires the Central and State Governments to ensure that courts, tribunals, and other judicial authorities are accessible to persons with disabilities. It also mandates the provision of sign language interpretation, Braille or audio formats, and other appropriate assistive devices and technologies to facilitate the participation of persons with disabilities in legal proceedings.

Furthermore, [the National Legal Services Authority \(Legal Services to the Mentally Ill and Persons with Mental Disabilities\) Regulations, 2010](#), provide for the provision of legal services to people with mental disabilities. The regulations require legal services authorities to provide legal aid and assistance to persons with mental disabilities and their families and to ensure that they receive a fair and impartial trial.

Despite these legal protections, people with disabilities in India continue to face significant barriers when accessing the justice system. The next section will explore the challenges faced by people with disabilities in accessing the justice system in India and potential solutions to improve access to justice for them.

LEGAL AND ACCESSIBILITY CHALLENGES IN THE JUSTICE SYSTEM

In addition to legal barriers, people with disabilities in India also face significant accessibility challenges when trying to access the justice system. These challenges can be physical, communication, and attitudinal in nature.

- Lack of awareness and sensitivity among legal professionals about the rights of people with disabilities is another barrier. Many lawyers, judges, and other legal professionals may not be familiar with the specific needs and challenges faced by people with disabilities. This can lead to misunderstandings, misconceptions, and even discrimination against people with disabilities in legal proceedings.
- Physical barriers refer to the physical obstacles that prevent people with disabilities from accessing courtrooms, legal aid offices, and other justice system facilities. For example, many court buildings in India are not wheelchair accessible, and there may be no accessible parking or entrances. This can make it difficult or impossible for people with physical disabilities to enter the building and participate in legal proceedings.
- Communication barriers refer to the challenges that people with hearing or speech impairments face in communicating with legal professionals and participating in legal proceedings. For example, there may be no sign language interpreters available in courtrooms, or there may be no captioning or other accommodations for people with hearing impairments. This can make it difficult for people with these disabilities to understand what is happening in court and to communicate effectively with their lawyers and the judge.
- Attitudinal barriers refer to the negative attitudes and stereotypes that many people hold about people with disabilities. These attitudes can create barriers to accessing the justice system by

making people with disabilities feel unwelcome or unsupported. For example, a judge or lawyer may assume that a person with an intellectual disability is not capable of understanding legal proceedings or making decisions for themselves and may therefore not take their input into account.^{ix}

Despite these barriers, there are laws in place to protect the rights of people with disabilities in India. As we discussed earlier, the RPWD Act and other laws mandate the provision of certain accommodations and facilities to persons with disabilities in the justice system. However, there is still a long way to go to ensure that people with disabilities have equal access to justice in India. The next section will explore more about Accessibility challenges to justice for people with disabilities.

There are many examples of accessibility challenges faced by people with different types of disabilities in the justice system. For example, a person with a visual impairment may not be able to read legal documents or see the facial expressions of the people they are communicating with. A person with a hearing impairment may not be able to hear verbal instructions or evidence presented in court. A person with a physical disability may not be able to navigate the court building or access the witness stand. To increase accessibility in the justice system for people with disabilities, several measures could be taken. These include providing wheelchair ramps and accessible parking, installing assistive devices like hearing loops and captioning screens, providing sign language interpreters and other communication supports, and offering disability awareness training to legal professionals. By addressing these accessibility challenges, the justice system can become more inclusive and ensure that all people, including those with disabilities, have equal access to justice.

SUPPORT SERVICES FOR PEOPLE WITH DISABILITIES IN THE JUSTICE SYSTEM ^x

Support services and accommodations are crucial for ensuring that people with disabilities have equal access to justice. Unfortunately, the justice system in India often fails to provide these services and accommodations, creating additional barriers for people with disabilities.

- Legal aid is one of the most important support services that can be provided to people with disabilities in the justice system. The Legal Services Authorities Act of 1987 requires the government to provide free legal aid to people who are unable to afford it. However, in practice, many people with disabilities still face significant barriers to accessing legal aid, such as a lack of awareness of their rights, limited availability of legal aid lawyers, and physical barriers to accessing legal aid clinics.
- Another important accommodation is sign language interpretation for people with hearing impairments. The Rights of Persons with Disabilities Act of 2016 requires the government to provide sign language interpretation for people with hearing impairments in all public services, including the justice system. However, in practice, sign language interpretation is often not provided, making it difficult for people with hearing impairments to understand and participate in court proceedings.
- Accessible courtrooms are also an important accommodation for people with disabilities. The Rights of Persons with Disabilities Act of 2016 requires all government buildings to be made accessible to people with disabilities. This includes courtrooms, which should be equipped with features such as ramps, accessible seating, and accessible communication tools.

While there are legal provisions in place for support services and accommodations in the justice system, the implementation of these provisions is often lacking. It is important for the government and the justice system to take proactive steps to ensure that people with disabilities have equal access to justice by providing the necessary support services and accommodations.

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INITIATIVES TO IMPROVE ACCESS TO JUSTICE FOR PEOPLE WITH DISABILITIES IN INDIA

Access to justice is a fundamental human right enshrined in the Indian Constitution. However, people with disabilities in India face significant challenges in accessing justice due to physical, communication, and attitudinal barriers. To address these challenges, various initiatives have been taken to improve access to justice for people with disabilities in India.

Initiatives taken to improve access to justice for people with disabilities in India:-

1. **Legal Aid and Assistance** - Legal aid and assistance are critical for ensuring access to justice for people with disabilities. The Legal Services Authorities Act, 1987^{xi} provides for free legal services to persons with disabilities. The National Legal Services Authority (NALSA) has also developed a scheme for providing legal services to persons with disabilities, which includes the provision of legal aid, legal advice, and representation.
2. **Accessibility Measures** - The Ministry of Social Justice and Empowerment has developed guidelines for making buildings and infrastructure accessible to people with disabilities. These guidelines have been incorporated into the National Building Code of India. In addition, the Rights of Persons with Disabilities Act, 2016 mandates that all government buildings and infrastructure be made accessible to persons with disabilities.^{xii}
3. **Sensitization and Training** - Sensitization and training of judicial officers and other stakeholders are crucial for ensuring that people with disabilities are treated fairly and respectfully in the justice system. The National Judicial Academy has developed training modules for judges and court personnel on disability rights and access to justice.^{xiii}
4. **Technology-Based Solutions** - Technology can play a significant role in improving access to justice for people with disabilities. The e-Courts project, launched by the Ministry of Law and Justice, aims to digitize the functioning of Indian courts and make the justice system more accessible to people with disabilities. The project includes the provision of accessible courtrooms, e-filing facilities, and video conferencing facilities for remote hearings.

While these initiatives have made some progress in improving access to justice for people with disabilities in India, significant challenges remain. Lack of awareness about disability rights, insufficient resources, and the absence of disability-inclusive policies and practices continue to hinder access to justice for people with disabilities in India.

Access to justice is a fundamental right that must be ensured for all. Initiatives such as legal aid and assistance, accessibility measures, sensitization and training, and technology-based solutions have the potential to improve access to justice for people with disabilities in India. However, sustained efforts are required to address the remaining challenges and ensure that the justice system is inclusive and accessible to all.

CONCLUSION

In conclusion, the accessibility and inclusivity of the justice system is essential for ensuring that people with disabilities in India have equal access to justice. Despite the legal provisions in place, there are still many barriers that prevent people with disabilities from accessing justice. These include physical, communication, and attitudinal barriers as well as legal barriers.

To overcome these barriers, various initiatives have been taken to increase accessibility and inclusivity in the justice system. These initiatives have shown positive results and improved the lives of people with disabilities. However, much more needs to be done to ensure that people with disabilities have equal access to justice in India.

Therefore, there is a need for increased awareness and action towards addressing the challenges faced by people with disabilities in accessing the justice system. This includes providing necessary support services and accommodations, training legal professionals on disability rights, and addressing the attitudinal barriers that exist towards people with disabilities.

Access to justice for people with disabilities is not just a matter of legal rights, but it is a fundamental human right. It is important to ensure that people with disabilities are able to access justice in a manner that is fair, equitable, and inclusive. Only then can we truly achieve a just and inclusive society for all. Encroachment and elevation of persons with disabilities are made easier by the provisions of the RPWD Act, 2016. The efficacy of the RPWD Act, 2016 in our social and national environment has to

be studied further by upcoming case studies. The involvement and collaboration of educators, parents, and community leaders is essential if inclusion is to be made effective and to overcome the obstacles to it. A new legislation enacted by the Indian government is aimed, which ensures that all persons irrespective of presence of any disabilities or persons with limited or reduced mobilities have access to an inclusive education and a better employment opportunities in future careers through proper implementation of its provisions.

PWDs may be benefitted from human rights education and the prevalence and awareness regarding the presence of the nation's law, which will ensure the rights and dignity of the PWDs, are uphold. The sharing of success stories and discussion about judgments and precedents through the case laws about how inclusion improves their lives would be greatly beneficial. All persons, regardless of their disability, should be made to feel as though they are a member of one equal society. Because of this, the idea of inclusion emerged as an appropriate answer to the problem of how to better integrate, engage, and teach all of these people including children in conventional schools and bring awareness to build a barrier free and inclusive environment. It would bring a positive affirmation in the lives of the persons having restricted ability and differently abled people.

ⁱ "Livelaw.in. (2018, December 15). Access to Justice Is a Fundamental Right Guaranteed under Article 14 & 21 of Constitution: SC Constitution Bench. Retrieved from <https://www.livelaw.in/access-justice-fundamental-right-guaranteed-article-14-21-constitution-sc-constitution-bench/>"

ⁱⁱ Persons with Disabilities: Good Practices. Retrieved from https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/CDLP-Finalreport-Access2JusticePWD.docx

ⁱⁱⁱ National Human Rights Commission. (n.d.). Human Rights of Persons with Disabilities - National and International Perspective. Retrieved from https://nhrc.nic.in/sites/default/files/DisabledRights_1.pdf

^{iv} Constitution of India art 14.

^v Constitution of India art 15

^{vi} Constitution of India art 21

^{vii} Rights of Persons with Disabilities Act, 2016, Act No. 49, Acts of Parliament, 2016 (India).

^{viii} Rights of Persons with Disabilities Act, 2016, s 31.

^{ix} United Nations Department of Economic and Social Affairs, "Access to Justice for Persons with Disabilities: An International Perspective", accessed on 26 February 2023, available at: <https://www.un.org/esa/socdev/documents/disability/Toolkit/Access-to-justice.pdf>.

^x Larson, David. (2014). Access to Justice for Persons with Disabilities: An Emerging Strategy. Laws. 3. 220. 10.3390/laws3020220.

^{xi} The Legal Services Authorities Act, 1987, section 12(1)

^{xii} The Rights of Persons with Disabilities Act, 2016, **Section 45**

^{xiii} National Judicial Academy. (2009). Journal of the National Judicial Academy Volume-1-C. Retrieved from https://nja.gov.in/Journals_Publications_Newsletters/Journal%20of%20the%20National%20Judicial%20Academy%20Volume-1-C.pdf