

# RIGHTS OF DISABLED PERSONS WITH SPECIAL REFERENCE TO JAMMU & KASHMIR: A CASE STUDY

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## ABSTRACT

*“My disability exists not because I use a wheelchair, but because the broader environment isn’t accessible”<sup>3</sup>*

Every individual, regardless of gender, creed, or color, has the right to live and exercise all the rights to which they are entitled as human beings, and no disability may negate such rights. In any case, impairment does not indicate a lack of ability to achieve any goal or exercise any right. Being disabled is not a barrier; instead, it is the responsibility of the national and international realms to ensure that no one is excluded due to any disability. Many initiatives have been taken nationally and internationally to safeguard and improve the rights of disabled people. According to the United Nations, this day aims to promote an understanding of disability issues and mobilize support for the dignity, rights, and well-being of people with disabilities”<sup>4</sup>. Various legislations have been adopted at the national level to safeguard and enhance the rights of disabled

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<sup>4</sup>‘Disabled population- Facts, findings and challenges’ (*Kashmir Images*, 3 Dec 2021) available at <<https://thekashmirimages.com/2021/12/03/disabled-population-facts-findings-and-challenges/>> accessed on 13 August 2023.

people. However, it is worth noting that rules without implementation are like a toothless tiger. Laws are only effective when followed in letter and spirit; otherwise, the purpose of enacting them gets defeated. Various sociological researches conducted by scholars and organizations have proven that disabled people are the most discriminated-against group in society. Disabled people have been neglected on the basis of many grounds like lack of proper documentation, illiteracy of disabled people, gender issues and also socio-economic grounds<sup>5</sup>. In the present study, the researchers performed an in-depth analysis to determine how far the laws related to disabled persons have been applied and monitored in order to evaluate their real implementation. For the present study the primary and secondary data sources and other pertinent literature were used as a basis.

*Keywords: Disability, Discrimination, Laws, Implementation, Protection, rights, safeguard*

## INTRODUCTION

Disability can be determined from numerous social, anthropological, medical, and psychological perspectives. According to Merriam Webster dictionary, “Disability is the physical, mental, cognitive, or developmental condition that impairs, interferes with, or limits a person's ability to engage in certain tasks or actions or participate in typical daily activities and interactions”<sup>6</sup>.

According to the World Health Organization, disability has three dimensions :

- a) impairment in a person’s body structure or function, or mental functioning; for example loss of a limb, loss of vision or memory loss,
- (b) activity limitation, such as difficulty in seeing, hearing, walking, or problem

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<sup>5</sup> Firdous Ahmad Malik and others, ‘An analysis of Persons with Disabilities Act 1995, Awareness among disable people in district Doda’, (2018) 8 International Journal of Research In Social Sciences.

<sup>6</sup>< <https://www.merriam-webster.com/dictionary/disability>> accessed on 13 August 2023.

solving, and

(c) restrictions on participating in normal daily activities, such as working, engaging in social and recreational activities, and obtaining health care and preventive services<sup>7</sup>.

Disability does not imply an inability to compete with others; instead, it is a medical condition that cannot be used to justify being disadvantaged. The rate of disability among people is increasing daily and has become a reason for concern regarding their protection from discrimination. Earlier, disabled people were seen as a liability to others and were frequently discriminated against. However, it was recognized around the 1980s that disabled persons must be permitted to participate in society's growth; otherwise, having a disability would become a social stigma and a form of discrimination against their rights and interests.

With ever increasing trend in, the number of persons with one or more types of disabilities as reflected in data, it necessitates formulation of strong laws and regulations to ensure that no one's progress is hampered by any health issue<sup>8</sup>. There are about 1 billion disabled individuals globally, representing around 15% of the global population, or nearly one in every seven people. There are 253 million visually impaired (blind), 200 million Intellectually disabled, 466 million hearing & speech impaired (deaf & mute), and 200 million people who use wheelchairs<sup>9</sup>.

“In India, 2.68 million people are disabled, accounting for 2.21% of the total population of 121 million people. Out of the 70.22 crore male Indian population, 1.5 crore are disabled, the most significant number being 46.2 lacs between the ages of 10 and 19. In India, there are 1.18 crore disabled women out of a total female population of 65.46 crore. 20.3% of Indians with disabilities have mobility impairments, 18.9% have hearing

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<sup>7</sup> ‘Disability and Health Overview’ (*Centre for Disease Control and Prevention*) <<https://www.cdc.gov/ncbddd/disabilityandhealth/disability>> accessed on 13 August 2023.

<sup>8</sup> ‘World Report on Disability’ (*World Health Organization*, 2011) <<https://www.who.int/teams/noncommunicable-diseases/sensory-functions-disability-and-rehabilitation/world-report-on-disability#:~:text=About%2015%25%20of%20the%20world's,a%20figure%20of%20around%2010%25>> accessed on 5<sup>th</sup> June 2023.

<sup>9</sup> *ibid.*

disabilities, 18.8% are visually impaired, and 8% have various disabilities”<sup>10</sup>. Disabilities in children are also a significant source of concern. In India, 20.42 lac children aged 0-6 years are impaired. This indicates that one out of every 1000 children aged 0-6 years have a disability. Literacy rates among disabled people in cities are higher than in rural areas. In rural regions, 45% of disabled people are literate, whereas 67% are in urban area<sup>11</sup>. In the state of Jammu & Kashmir(undivided- including the UT of Ladakh), there are “2 04,834 male disabled people, 1,03,730 of whom are literate, 1, 56,319 female disabled people, 47,239 of whom are literate, and 27,939 impaired children”<sup>12</sup>.

The individuals with disabilities may belong to multiple different racial, ethnic, gender or socioeconomic backgrounds and such intersecting identities can influence their experiences and types of barriers they encounter<sup>13</sup>. People with disabilities often face discrimination, a lack of accessibility, and societal stigmas, however, the challenges they encounter may be compounded when they intersect with other aspects of their identity<sup>14</sup>. For example, a disabled person who is also a person of color may face both racial discrimination and ableism simultaneously. The growing number of persons with disabilities necessitates a great deal of care and attention. Governments, NGOs, and society at large has realized that disability is not only a medical condition but a social condition as well, that could be addressed through appropriate rehabilitative measures and human-rights based laws<sup>15</sup>.

## **LEGAL INTROSPECTION ON THE RIGHTS OF DISABLED PERSONS**

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<sup>10</sup> ‘Census, 2011’ (*Government of India*) <<https://censusindia.gov.in/>> accessed on 5<sup>th</sup> June 2023.

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

<sup>13</sup> Trish Robichaud, ‘Intersectionality in disability inclusion: Breaking barriers and embracing diversity’ (*Linkedin*, 27 November 2023) <<https://www.linkedin.com/pulse/intersectionality-disability-inclusion-breaking-trish-robichaud-wbnyf/>> accessed on 20 Dec 2023.

<sup>14</sup> *ibid.*

<sup>15</sup>Renu Addlakha and Saptarshi Mandal, ‘Disability law in India: A paradigm shift or evolving discourse’ (2009) 44 EPW 62.

The United Nations has always tried to elevate the status of disabled people and improve their lives. The United Nations concern for the well-being and rights of disabled people is founded in its foundational principles, which are based on human rights, fundamental freedoms, and equality. The United Nations has made an essential contribution to improve the lives of disabled people and has made the efforts to safeguard and promote the rights of disabled people. United Nations General Assembly made a Declaration on 9th December 1975<sup>16</sup>. Pursuant to the Declaration, disabled people were granted intrinsic rights to human dignity, regardless of the origin, type, or severity of their impairments, along with the basic fundamental rights. Though this resolution of the assembly has no binding force but establishes a framework that may be used for international and domestic law purposes.<sup>17</sup>

With the United Nations designating the 1982-1992 period as the Decade of Disabled Persons, the rehabilitation movement gained momentum<sup>18</sup>. In 1986, the Indian government established the Rehabilitation Council of India to assist the rehabilitation of impaired individual's. The Persons with Disabilities Act (Equal Opportunity, Protection of Rights, and Full Participation), 1995 was enacted. It was a big step towards ensuring equal opportunity and full involvement in nation-building of individuals with disabilities.

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<sup>16</sup>Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

<sup>17</sup> Declaration on the Rights of Disabled Persons Rights (adopted 09 December 1975 UNGA Res A/RES/61/106 .

<sup>18</sup>UNGA Res 37/52 (03 December 1982).

Later a significant step was adopted by United Nations General Assembly on 12<sup>th</sup> December, 2006<sup>19</sup> in the form of a Convention, to protect the rights and dignity of persons with disabilities. Pertinent to the Convention, parties are required to promote, protect and ensure the full enjoyment of human rights by persons with disabilities and ensure full equality under the law. India, a signatory, ratified the Convention in 2007. The treaty obliged governments, private citizens, and civil society to protect the rights of people with disabilities.<sup>20</sup>

Owing to the international obligations under the United Nations Convention on the Rights of persons with Disabilities to which India was a signatory, the Rights of Persons with Disabilities Act, 2016 was enacted replacing the Act of 1995. As per the Convention the signatory states were mandated to enact new laws or amend the existing laws to remove obstacles to the development and growth of disabled people. The new Act widened the definition of disability by incorporating 21 types of disabilities and is more inclusionary, as compared to 7 types of disabilities included in the previous Act which was narrower without any elucidation<sup>21</sup>.

In the 1995 Act, a person with disability meant, “a person suffering from not less than 40% of any disability as certified by a medical authority”<sup>22</sup> while as in the 2016 Act, a person with disability means “a person with long term physical, mental, intellectual or sensory impairment which in, interaction with barriers, hinders his full and effective participation in society equally with others”<sup>23</sup>. This is broader and a more inclusive understanding of disability. The approach in the old Act was charity based whereas the new Act provides for a rights-based approach addressing disability as a human rights issue and not only a medical condition. The new Act stresses the principles of non-

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<sup>19</sup> UNGA Res A/RES/61/106 (24 January 2007).

<sup>20</sup>United Nations Convention on the Rights of Persons with Disabilities, art. 4.

<sup>21</sup> Abhilash Balakrishnan, Karishma Kukarni, ‘The Rights of Persons with Disabilities Act 2016: Mental Health Implications’ (2019) 41 Indian Journal of Psychological Medicine 65.

<sup>22</sup> The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation ) Act, 1995, ch 1.

<sup>23</sup> *ibid.*

discrimination, full and effective participation and inclusion in society, equality of opportunity, accessibility and respect for evolving capacities of children with disabilities.

The PWD Act of 1995 was repealed in 2016 and was replaced with the Rights of Persons with Disabilities Act, 2016. The revised Act of 2016 expanded the category of disability to include 21 forms of disabilities, up from seven in the previous Act. The Act's schedule addresses physical, mental, and intellectual impairment and disability caused by chronic neurological illnesses and blood disorders. For the first time, acid attack survivors and those with speech and language difficulties have been included in the list<sup>24</sup>. The Act emphasizes the need to ensure accessibility in private and government public buildings within the specified time range.<sup>25</sup> The Act also emphasized the formation of national and state funds to give financial assistance to people with disabilities.<sup>26</sup> This Act seeks to endorse the concept of “*inclusive society*” to prevent the discrimination against disabled people so that their individuality and dignity may be protected. The Act is apparently a welcome step so far as the rights of disabled persons are concerned, however it demands proper monitoring and evaluation so far as its implementation is concerned.

## **DISABLED PERSONS IN KASHMIR: A CASE STUDY**

The Union Territory of Jammu and Kashmir has a high number of disabled persons as compared to the other administrative units accounting for nearly 3% of its total population<sup>27</sup>. The Department of Social Welfare, Government of Jammu & Kashmir has registered under the persons with Disabilities Act, 2016 over 7.5 lakh disabled people in 21 categories, most of which reside in the Kashmir valley. In the ten districts of Kashmir

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<sup>24</sup>The Rights of Persons with Disabilities Act 2016, s 2.

<sup>25</sup> *ibid.* s 40,41,42.

<sup>26</sup> *ibid.* s 86,87,88.

<sup>27</sup> Census, 2011' (*Government of India*) <<https://censusindia.gov.in/>> accessed on 12 July 2023.

Valley, 31,085 persons were recognized as disabled<sup>28</sup>. As the Union Territory of Jammu and Kashmir is now directly governed by federal laws due to the abrogation of Article 370 of the Indian Constitution, the Central Act of 2016 superseded the Jammu & Kashmir Protection of Rights with Disabilities Act, 1998, to safeguard the rights of people with disabilities. Additionally, in 2021, Jammu and Kashmir's government issued regulations to guarantee the correct implementation of Central Law, which aims to advance and preserve the rights and dignity of individuals with disabilities in a variety of aspects of life. Nevertheless, persons with disabilities still confront many difficulties.

In order to determine the extent to which the Rights of Persons with Disabilities Act, 2016, is being implemented in Kashmir, the researchers performed a case study in the District of Baramulla. The researchers chose Baramulla since it is the third most populated district in Kashmir and ranks third in terms of registered disabled people<sup>29</sup>. A case study involves a detailed study of the concerned unit of analysis within its natural setting and that unit of analysis can be an individual, a family, a household, a community, an organization, an event or even a decision<sup>30</sup>. When a person wishes to gather tangible, contextual, in-depth knowledge about a specific real-world issue, a case study is a practical research approach<sup>31</sup>.

## **CASE STUDY 1**

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<sup>28</sup> QaziWasif, 'In Kashmir Valley, 74% more people certified disabled during PDP- BJP Rule' (*Indiaspend*, 03 July 2018) < <https://www.indiaspend.com/in-kashmir-valley-74-more-people-certified-disabled>> accessed on 11th July 2023.

<sup>29</sup>Data obtained through right to information requests.

<sup>30</sup>Arya Priya, 'Case study methodology of qualitative research: Key attributes and navigating the conundrums in its application, (*Sagepub* 19 November 2020) <<https://journals.sagepub.com>> accessed on 10 July 2023.

<sup>31</sup> Sarah Crowe and others 'The Case Study Approach' (2011) 11 *BMC Medical Research Methodology* <[bmcmedresmethodol.biomedcentral.com](http://bmcmedresmethodol.biomedcentral.com)> accessed on 11 July 2023.



Abdul Rashid (name changed), the eldest of his parents' four children, is a resident of the Botingoo area, about 10.8 km from Sopore town of Baramulla of Jammu & Kashmir. His father is a laborer, and his mother a housewife. He suffered polio in both of his legs when he was only a few months old and became wheelchair-bound for the rest of his life. He studied till 12th grade in his village in the local school. But the real test of his disability started when he was admitted to the government college at Sopore to pursue a Bachelor of Arts degree. Due to his financial conditions, Rashid's father cannot arrange a personal vehicle for him to travel to his college and back. Rashid has to use the public transport, creating difficulties for him, as public transport, be it buses or other vehicles, lack a ramp system and have high steps, which is a physical barrier for a person who uses a wheelchair. Attending classes is also an uphill task for Rashid, as the Sopore Degree College, neither has any ramp system nor any lift services available. He can only enter the classroom with the help of his friends and other mates. Sometimes he has to wait for hours until someone could come and help him enter the classroom; otherwise, he is forced to miss the classes.

The major problem that Rashid encounters in this case is the structure of the building, which is unfriendly, for people with physical disabilities. Even though significant emphasis has been laid on accessibility in the Persons with Disabilities Act, of 2016 on the ground level, nothing much has been done to implement the provisions of the Act. Let alone Rashid's college not even a single installation has taken place in Baramulla at any public place till date. The Government of India launched a campaign called as Accessible India Campaign in the year 2015. Under this campaign, funds were released to remove architectural barriers in government buildings to make them disabled-friendly<sup>32</sup>. But surprisingly, nothing has been done on the grass root level in this regard.

## **CASE STUDY 2**

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<sup>32</sup>Javed Iqbal, 'Centre releases funds to J&K for making govt. buildings disabled friendly' (*Greater Kashmir* 09 January 2019) < <https://www.greaterkashmir.com/?s=Centre+releases+funds+to+J%26K+for+making+govt.+buildings+disabled+friendly> > accessed on 13 August 2023.

Tuba Reyaz (name changed) is a 12-year-old girl who resides in the village Warapora Sopore, district Baramulla of Jammu & Kashmir. Her father is a professional driver, and her mother a housewife. She has cerebral palsy by birth, a disability resulting from damage to the brain before, during, or shortly after birth and outwardly manifested by muscular in-coordination and speech disturbances<sup>33</sup>. She has two younger brothers with whom she shares a good bond. They help her move around as her mother is busy doing household chores and her father is engaged in earning a living. When Tuba's younger brothers started going to school, she felt very alone at home and demanded to go to school. Even though Tuba is 12 years old, she was never sent to school by her parents, who are of the belief that she cannot attend the regular schools, as they lack the infrastructure which is disabled person-friendly and have absence of specially trained teachers. But on Tuba's constant demand, she was taken to a nearby Government primary school by her mother, which she is enjoying to the full. But the primary school is not the place meant for her as it lacks everything which a disabled person requires. There is no particular school in the village or in its adjoining areas where Tuba could be admitted. The only school for specially-abled in the district of Baramulla, named Parivaar, is located in Baramulla town, and can accommodate 150 children with disabilities. Currently, only 75 are on a roll as most disabled children belong to far-off places and are from the lower income group.

The provision under the Act of 2016 provides for the establishment of special schools for children with disabilities, but it seems a distant dream as there are only eight schools with special needs in the entire Jammu & Kashmir and only one in district Baramulla; all are privately run and are unaided. Furthermore, there are only two higher secondary institutions one in Kashmir and the other in Jammu<sup>34</sup>. "In Kashmir, private educational institutions usually refuse to admit children with disability, saying that they don't have specially qualified teachers and infrastructure, especially the top schools, thus denying

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<sup>33</sup> <<https://www.merriam-webster.com/dictionary/disability>> accessed on 13 August 2023.

<sup>34</sup>Naseer Ganai, 'Children with disabilities struggle to get admissions in schools' (*Outlook* 23 June 2023) <<https://www.outlookindia.com/national/in-j-k-children-with-disabilities-struggle-to-get-admission-in-schools-news-297082>> accessed on 11 November 2023.

them inclusive education”, as informed by Zaheer Jan, a child rights activist in Kashmir.<sup>35</sup>

This study reveals that one of the reasons behind lower literacy ratio among disabled children in Kashmir is the lack of special schools, specially trained teachers and disabled-friendly infrastructure in regular schools. Education is one of the fundamental rights of a person under Article 21A of the Constitution of India, and the lack of special schools for disabled children violates their fundamental right. This violation leads to discrimination and exclusion and creates inequality between the abled and disabled classes of society. The Right to Education Act, 2009 stands for inclusive education which supports equal education to each and every child without any sort of discrimination with respect to their gender, caste, creed, race, color, ability or disability<sup>36</sup>. Section 3(2) of the Act lays impetus on the elementary education of children with disabilities. Further, as per the Amendment of 2012, it also mandates that a child with multiple and/or severe disabilities has the right to opt for home-based education<sup>37</sup>. Education is pivotal in bringing equilibrium between medical and vocational rehabilitation and societal changes to people with disabilities. Through education, a revolution may occur by which social uplift and the life scenario would get changed.

## CONCLUSION

Inclusive growth in society necessitates total growth and development of everyone, regardless of any impairment. Without inclusive growth, society would stay static. There is no doubt that disabled people cannot undertake daily activities like other people do,

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<sup>35</sup> *ibid.*

<sup>36</sup> Mandira Saha Sikdar, ‘Role of RTE Act in inclusive Education’ (*Academia*) < [https://www.academia.edu/43157502/ROLE\\_OF\\_RTE\\_ACT\\_IN\\_INCLUSIVE\\_EDUCATION#:~:text=ROLE%20OF%20RTE%20ACT%20IN%20INCLUSIVE%20EDUCATION%20MANDIRA%20SAHA%20SIKDAR,%2C%20creed%2C%20race%2C%20color%2C](https://www.academia.edu/43157502/ROLE_OF_RTE_ACT_IN_INCLUSIVE_EDUCATION#:~:text=ROLE%20OF%20RTE%20ACT%20IN%20INCLUSIVE%20EDUCATION%20MANDIRA%20SAHA%20SIKDAR,%2C%20creed%2C%20race%2C%20color%2C) > accessed on 10 Nov 2023.

<sup>37</sup> The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation ) Act, 1995, s 3(2).

due to their medical conditions, but this should not be a barrier to their overall development. A person born with numerous inherent human rights cannot be denied their right to exercise those rights simply because of any disability they are suffering from. However, the irony is that people with disabilities have become one of society's most marginalized groups because their fundamental rights, such as right to education, access, life, liberty and, equality are denied in a variety of ways, as evidenced by factors such as the lack of special schools, inaccessibility to regular schools, shortage of specially trained teachers, accessibility in buildings, transportation, and access to other services. There are a number of regulations in place to empower and protect people with disabilities, but their execution is nevertheless fraught with difficulties. The inclusion of people with disabilities is hampered by poor execution of law, as it is evident from the above study that laws related to the disabled people in Union territory of Jammu and Kashmir are not being properly implemented and that in a way paved the way towards exclusion rather than inclusion.

