
CASE NOTE ON JEEJA GHOSH & ANR. VS. UNION OF INDIA & ORS. (2016) 7 SCC 761: A JURISPRUDENTIAL PARADIGM SHIFT - DIGNITY, ACCESSIBILITY, AND THE CONSTITUTIONALIZING OF DISABILITY RIGHTS IN INDIA

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Case Note: Jeeja Ghosh & Anr. Vs. Union Of India & Ors. (2016) 7 SCC 761

Citation: (2016) 7 SCC 761

Date of Decision: May 12, 2016

Bench: A.K. Sikri, J. and R.K. Agrawal, J.

Jurisdiction: Supreme Court of India

I. Introduction

Although, the legal jurisprudence of disability rights in India has experienced a marked change of direction. Historically, Indian law addressed the subject of disability from a charitable-medical perspective. Disabled people were seen as recipients of social welfare rather than as independent holders of basic human rights. Where disability intersects with constitutional law and international human rights law, the case of *Jeeja Ghosh v. Union of India*¹ represents a turning point which bridges the historic paradigm of charitable-medical law and the contemporary paradigm of human rights law. As such, it remains the Supreme Court's first, comprehensive adjudication specifically dealing with the rights of persons with disabilities to mobility and access to air travel.²

Furthermore, the implications of Jeeja Ghosh are far-reaching, particularly given that the Court

¹ *Jeeja Ghosh v. Union of India*, 2016 (7) SCC 761.

² *Ibid.*

found that "reasonable accommodations," are not an act of beneficence, but are rather an essential component of substantive equality as protected under **Articles 14³ and 21⁴ of the Constitution** of India.⁵ The ideological shift articulated in *Jeeja Ghosh* reflects India's obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD).⁶

That being said, a critical analysis of *Jeeja Ghosh* is warranted. Although, the Court issued a strong legal rebuke to the practice of arbitrary discrimination, the remedial response provided by the Court i.e., primarily individualized compensatory relief, demonstrates the recurring tension present in Indian constitutional litigation. The tension between providing direct redress for egregious violations of the Constitution and the imperative need for widespread institutional reform is evident in the failure of the Court to issue a structural injunction requiring immediate institutional reform.⁷ Accordingly, this note will argue that although *Jeeja Ghosh* fundamentally altered the jurisprudence of disability rights by focusing upon the importance of human dignity, the Court's failure to require the State to institute immediate structural reforms has resulted in a defective remedy.

II. Brief Facts of the Case

This case was filed as a result of an event occurring on February 19, 2012. An important disability rights advocate in India who has Cerebral Palsy,⁸ Ms. Jeeja Ghosh, was scheduled to fly on a SpiceJet flight from Kolkata to Goa for an International Conference sponsored by the NGO ADAPT. Once she had taken her seat, the airline staff, at the direction of the Flight Captain, forced her to leave the plane. She was told by the staff that they were removing her from the flight because her disability made her a flight risk. The airline did not ask her if there was something wrong with the airplane or whether she needed assistance. They also did not consult with a doctor to see if there was anything medically wrong with her that would have

³ INDIA CONSTI. art. 14.

⁴ INDIA CONSTI. art. 21.

⁵ *Vikash Kumar v. Union Public Service Commission*, (2021) 5 SCC 370.

⁶ Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3 (entered into force May 3, 2008); *Indian Supreme Court Upholds Reasonable Accommodation for Persons with Disabilities*, Oxford Human Rights Hub, <https://ohrh.law.ox.ac.uk/indian-supreme-court-upholds-reasonable-accommodation-for-persons-with-disabilities/> (last visited Mar. 3, 2026).

⁷ *Disability rights law: From charity to enforceable equality*, Deccan Herald, <https://www.deccanherald.com/amp/story/opinion%2Ffrom-favours-to-full-rights-rethinking-disability-jurisprudence-3915872> (last visited Mar. 3, 2026).

⁸ *Cerebral Palsy*, National Institute of Neurological Disorders and Stroke (Accessed on Dec. 22, 2025, 23:27) <https://www.ninds.nih.gov/health-information/disorders/cerebral-palsy>.

caused them to remove her from the flight.

In the court filing, the Petitioners argued that the action by SpiceJet violated the requirements of the Directorate General of Civil Aviation (DGCA) Civil Aviation Regulations (CAR) 2008, specifically Section II Part III Subsection H which requires airlines to treat people with disabilities in the same way as everyone else. In addition, the Petitioners argued that the Union of India and the DGCA breached their duty to protect citizens from arbitrary discrimination based on a disability under articles 14, 19, and 21 of the Indian Constitution. Additionally, the Petitioners claimed that the Union of India and the DGCA also failed to fulfill their obligations to protect the rights of people with disabilities as outlined in the Persons with Disabilities Act, 1995 (PwD Act), and the United Nations Convention on the Rights of People with Disabilities (UNCRPD).

SpiceJet argued that the reason it removed Ms. Ghosh from the flight was because she failed to explicitly disclose her disability when she booked the flight; therefore, she allegedly violated article 4.1 of the CAR 2008, which provides that passengers are required to provide advance notice of any disability they may have to the airline. SpiceJet stated that because of Ms. Ghosh's failure to provide this notice, coupled with her apparent physical manifestations of cerebral palsy, it was reasonable for the Flight Captain to determine that Ms. Ghosh posed a medical risk to herself and other passengers and therefore, he should be allowed to remove her from the flight under article 5.2 of the CAR.⁹

III. Issues

1. Whether the forceful de-boarding of the petitioner, without medical consultation or adequate justification, constituted arbitrary and unlawful discrimination violative of her fundamental rights under Articles 14 and 21 of the Constitution.
2. Whether the actions of the airline contravened the mandatory guidelines prescribed by the DGCA under the CAR, 2008, and Rule 133-A of the Aircraft Rules, 1937.
3. Whether the State and private entities operating public transport owe an affirmative obligation to provide reasonable accommodation and ensure barrier-free access, consistent

⁹ Jeeja Ghosh, *Supra* note 1.

with domestic legislation and the UNCRPD.

IV. Judgment

The supreme court, in a decision written by justice A.K. Sikri, gave a clear verdict in favour of the petitioner. The Court held that this incident supported the assertion made in Joseph P. Shapiro's book *No Pity*, "non-disabled Americans don't know anything about disabled people".¹⁰

The ratio decidendi is based on the idea that discrimination against individuals with disabilities is a deep and egregious affront to an individual's right to human dignity, which is inextricably linked to the right to life under article 21.¹¹ The Court further ruled that Spicejet's actions were both inappropriate and unfair to Ms. Ghosh, directly contravening the CAR 2008 and rule 133-a of the aircraft rules 1937. The Court also noted that the airline's rationale that the reason for its decision was the non-disclosure of the petitioner's disability, was clearly unfounded. The Court stated that the visible nature of the disability was the very factor that would require Spicejet to take proactive measures to accommodate the needs of Ms. Ghosh. The pilot's unilaterally made decision to remove the petitioner from the plane demonstrated a systemic failure of the airline to treat disabled passengers with even a modicum of respect.¹²

In addition, the Court utilized international law to support its legal analysis and interpretation of domestic constitutional provisions. Specifically, the Court cited article 5 (equality and non-discrimination) and article 9 (accessibility) of the United Nations Convention on Rights of People with Disabilities (UNCRPD), to emphasize that the concept of equality encompasses more than simply the absence of discrimination, but also includes positive action taken by the state to differentiate reasonably and facilitate participation. Justice Sikri additionally articulated that rights granted pursuant to the 1995 act are premised upon the "sound principle of human dignity" and that dignity is a significant component of the right to life and liberty.¹³

Finally, as a remedy, the Court awarded the petitioner compensatory damages in the amount of Rs. 10,00,000, for the extreme mental and emotional distress she experienced, the humiliation she endured, and the loss of opportunity. The Court emphasized the need for a

¹⁰ Jeeja Ghosh, *Supra* note 1.

¹¹ *Rajive Raturi vs Union Of India*, AIR ONLINE 2018 SC 544

¹² Jeeja Ghosh, *Supra* note 1.

¹³ *Rajive Raturi, Supra* note 11.

paradigmatic shift in how society views disability, moving from viewing people with disabilities as deserving of pity, to viewing them as autonomous and having an inherent right to access public places.¹⁴

V. Critical Analysis

The Jeeja Ghosh case has an ambiguous position within India's constitutional legal system. On one hand, it is an undeniable victory for disability rights; on the other hand, it makes apparent the limitation that lies in using remedial measures (i.e., monetary compensation) to produce systemic reform. An examination of the Court's rationales relative to subsequent judicial decisions, international obligations and the practical boundaries of the Court's remedies will provide necessary context to the case.

A. Elevating Disability Rights to Article 21: Substantive Equality

The Court's most lasting jurisprudential contributions in Jeeja Ghosh, was to develop a strong theoretical framework of substantive equality. The Court interpreted Article 21 to contain an inherent right to reasonable accommodation, which caused a break from the previous formalistic interpretation of equality.

This foundational work provided the necessary framework for subsequent landmark judgments. A three-judge bench in *Vikash Kumar v. UPSC* (2021) headed by Justice D.Y. Chandrachud, relied heavily upon Jeeja Ghosh, in articulating that a denial of reasonable accommodation would constitute a clear form of discrimination. *Vikash Kumar* (2021) made it definitively clear that the "benchmark disability" threshold (minimum 40% impairment) could not be used as a precondition to refuse general reasonable accommodations, i.e., provide a scribe. The conceptual connection between dignity, reasonable accommodation, and substantive equality developed in Jeeja Ghosh (2019), is now the foundation of modern Indian disability jurisprudence.¹⁵

Jeeja Ghosh (2019) also confirmed the precedent that fundamental rights are meaningless if there is no enabling right of accessibility. As stated in *Rajive Raturi v. Union of India* (2017)

¹⁴ *Miles to Go: For Dignified Treatment of Disabled Travellers*, Peoples Democracy, https://peoplesdemocracy.in/2022/0515_pd/miles-go-dignified-treatment-disabled-travellers

¹⁵ *Special Undergraduate Series—Enforcing Disability Rights: the Indian Supreme Court's Judgment in Vikash Kumar*, I-CONnect, <https://www.iconnectblog.com/special-undergraduate-series-enforcing-disability-rights-the-indian-supreme-courts-judgment-in-vikash-kumar/> (last visited Mar. 3, 2026).

this same principle was articulated again. The right to life assumes much greater importance to individuals with disabilities because they require compensatory provisions to navigate their day-to-day lives, free from the humiliation of being seen as dependent.¹⁶

B. The UNCRPD and the Limits of Dualism

The court's decision has demonstrated a high level of understanding for what would be expected of India in terms of compliance with international law. As per the 'dualistic' theory of international law as applied in India, international treaties are not automatically made part of an individual nation's statute law, but rather need to be incorporated into domestic law or provide interpretation for the domestic law when it is silent. Through making explicit reference to articles 5 and 9 of the UNCRPD, the court was able to use the international framework to animate India's domestic legislation.¹⁷

However, there remains a considerable gap between theoretical compliance with international law and the practical application of that compliance through legal action. The UNCRPD requires significant system changes from all member countries (i.e., states) by requiring them to "develop, promulgate and monitor the implementation of minimum standards".¹⁸ Although the court recognized this principle, the 2016 judgment did not require the state to transform their system of monitoring through structurally injunctive remedies; therefore, a chasm remains between the elevated international standard for compliance and the limited enforcement mechanisms available domestically.

C. The Illusion of Change: The "Fire-Fighting" Nature of Compensatory Relief

The main criticism of Jeeja Ghosh lies in the way that it resolved the case on the basis of remediation. The Court awarded ₹10,00,000 in damages to address the extreme personal humiliation Ms. Ghosh experienced; however, as a vehicle for substantive equality, damages are inherently limiting in their ability to provide redress.

As a result of resolving disability rights cases via individualized damages awards, courts are relegated to a "fire-fighting" posture (i.e., they respond to immediate hardship without

¹⁶ *Disability Justice: Court Decisions on Disability Rights in India*, Centre for Law & Policy Research, https://clpr.org.in/wp-content/uploads/2024/12/Disability-Justice_Accessible-Soft-Copy-1.pdf (last visited Mar. 3, 2026).

¹⁷ Jeeja Ghosh *Supra* note 1.

¹⁸ Rajive Raturi, *Supra* note 11.

addressing systemic violations). This is demonstrated by the fact that the Court punished SpiceJet financially for violating Ms. Ghosh's rights; however, the Court did not simultaneously issue comprehensive injunctive relief (to require institutions to comply with the law) or mandamus to compel each and every airline in the country to continually audit their own compliance. As such, the Court had the opportunity to enact long-lasting systemic reform, but failed to do so.¹⁹

The problem is evident now. The ruling has created an awareness issue but it's still difficult to be optimistic about the situation in practice. In May 2022 IndiGo Airlines refused to allow a teenage boy who had a disability to board their flight at Ranchi Airport, and stated that they were concerned he was in a state of panic; this was eerily similar to the way the court condemned the exclusionary risk assessments that occurred in the case of Jeeja Ghosh. The DGCA later fined IndiGo Airlines ₹500,000, however the repeated occurrence of events like these clearly shows that punitive fines do not create the incentive for private companies to have a culture of reasonableness in terms of accommodating people. Most of the time, financial penalties are just viewed by private businesses as the costs associated with operating a business, rather than a means to create real change in how they design their services.²⁰

D. Legislative Shifts and Unresolved Structural Deficits

Although the RPwD Act of 2016 has further reinforced the requirement of structural measures to address the need for a legal remedy, sections 40, 41, and 46 of the statute clearly mandates barrier free access to public transportation systems including air travel. However, despite the new legislative framework, the absence of effective enforcement mechanisms makes it difficult to assert these rights effectively.²¹

Furthermore, the statutory agencies responsible for enforcing the rights in the statute are generally under-funded and have an emphasis on recommendatory as opposed to punitive powers. In addition, because the Supreme Court historically relies upon broad, nationwide, top-down directives as opposed to developing strong, local, adjudicative mechanisms to enforce its rulings, many disability rights continue to be confined to orders from the courts and do not

¹⁹ Id.

²⁰ *DGCA fines IndiGo Rs 5 lakh for not boarding special needs child*, Times of India, <https://timesofindia.indiatimes.com/india/dgca-fines-indigo-rs-5-lakh-for-not-boarding-special-needs-child/articleshow/91852927.cms> (last visited Mar. 3, 2026).

²¹ *Disability Justice: Court Decisions on Disability Rights in India*, *Supra* note 12.

translate into tangible accessibility in physical structures.²²

E. The Court's Ongoing Supervisory Role

To the court's credit, it maintained its oversight over the DGCA, ultimately resulting in another order in December 2021. In this process, the Court acknowledged serious gaps in the revised version of CAR guidelines. Specifically, the Court clearly stated that no differently abled person is to be physically lifted by hand without that person's express consent; the action being described as "inhuman." The Court also addressed the humiliation of requiring people with prosthetic limbs or calipers to have them removed for security screening purposes, stating that security screenings can be done in a way that maintains human dignity.

The Court's continued oversight is an example of the painfully slow implementation of structural reforms. That the Court was required to remind the regulatory bodies of the basic principles of consent and dignity regarding the physical lifting of a person (five years after the original judgment) shows that the regulatory bodies did not implement the intent of the original 2016 judgment on a proactive basis.²³

VI. Conclusion

Jeeja Ghosh v. Union of India has had a significant influence in shaping Indian constitutional jurisprudence. It elevated the discussion about disability from simply being statutory compliance to the higher constitutional plane of human dignity and substantive equality under Article 21. The Supreme Court established that reasonable accommodations are a fundamental right to provide lower courts and policy makers the necessary doctrinal tools to fight against discrimination. In terms of structural reform, however, the judgment still lacks completion. The Court's reliance on individualized compensatory relief was unable to dismantle the deeply embedded institutional barriers that exist in the aviation industry. The continued occurrence of discriminatory events at airports long after the landmark decision is a glaring example of a system which continually requires the judicial branch to act as a fireman, continuously providing compensatory justice. Ultimately, Jeeja Ghosh demonstrates the importance of this lesson: it is possible to create sufficient doctrinal clarity, but it is impossible to achieve the full

²² Aditya Mehrotra, *India Disability Rights*, JURIST (Jan. 2023), <https://www.jurist.org/commentary/2023/01/aditya-mehrota-india-disability-rights/> (last visited Mar. 3, 2026).

²³ Jeeja Ghosh *Supra* note 1.

potential of substantive equality until the judiciary evolves into the role of an architect. Structural injunctions and continuous oversight should be utilized by the judiciary to compel both the State and private entities to create an accessible society. Until this occurs, the ability of disabled individuals to fly will continue to be limited; not due to their impairments, but due to an unresponsive infrastructure.