
RIGHTS OF DIFFERENTLY ABLED PERSONS UNDER THE UNCRPD: A COMPARATIVE ANALYSIS OF THE INDIAN AND SRI LANKAN LEGAL FRAMEWORKS

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ABSTRACT

The empowerment through the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) has brought about a paradigm shift from the concept of persons with disabilities based on welfare to those with disabilities based upon equality and social inclusion. However, within the South Asian context, the domestication of these global commitments and obligations is disperse and uneven. In this scenario, the paper undertakes a comparative study to evaluate and assess the different legislative regimes and development with respect to the rights of differently abled persons in both Indian and Lankan jurisdictions, who share common constitutional and post-colonial traditions. The paper critically evaluates and examines constitutional charters and post-constitutional developments and judicial mind-sets to determine to what extent and measure UNCRPD ideologies have percolated into and influenced these domestic jurisdictions. The results show that though there has been some development and legislative codification based upon international ideologies and charters with respect to the rights and empowerment of persons with disabilities within Indian jurisprudence compared to Lankan jurisprudence, it remains firmly rooted and based upon prevailing social and governmental perceptions rooted and based upon welfare ideologies and philosophies. This study employs a doctrinal qualitative and comparative legal methodology based on the analysis of domestic laws, judicial decisions, and international disability rights instruments, particularly the UNCRPD, in India and Sri Lanka.

Keywords: UNCRPD, Rights of differently abled persons, South Asian context

Introduction

The right of every individual to be treated with equality and human dignity is globally acknowledged as a fundamental human jurisprudence. However, this common recognition has not been sufficient to ensure the effective protection of vulnerable groups, particularly differently abled persons, who require specific legal safeguards and social support to achieve right-based inclusion and independent participation within society. Several decades ago, disability was often viewed globally as a Para natural phenomenon. As Karlan and Rutherglen observe, this perception treated disability as an inevitable human condition rather than a matter of rights or justice, thereby reinforcing the invisibility of persons with disabilities in law and policy.¹ Therefore, individuals with disabilities were regarded as a distinct group and systematically excluded from mainstream social, economic, and institutional structures.

The 2022 World Health Organization (WHO) reported that as of 2021, an estimated 1.3 billion people, or 16% of the global population experience significant disability, where 80% of them live in low- and middle-income countries.² In south Asian countries alone, hosts a significant portion of the world's population with disabilities.³ The region faces distinctive challenges in disability inclusion, shaped by high population density, socioeconomic disparities, and limited institutional capacity. In South Asian Region, a vast number of people are disabled and fundamental support such as access to social safety nets, education, health services, and gainful employment. To effectively minimize the barriers commonly encountered by the differently abled community, it is imperative to undertake a comprehensive regional assessment of the operational efficacy of legal enforcement mechanisms designed to safeguard their rights. Such an evaluation should also examine the degree of compliance with international human rights standards, particularly the obligations arising under the UNCRPD. Within the South Asian context, this scrutiny is crucial to determine whether domestic legal systems have successfully transformed international commitments into tangible, enforceable protections that promote inclusion, equality, and dignity for persons with disabilities.

¹ Pamela S Karlan and George Rutherglen, 'Disabilities, Discrimination, and Reasonable Accommodation' (1996) 46 *Duke Law Journal* 1, p. 07

² Raisul Akram, Arjan Buis, Marufa Sultana, Jeremy A. Lauer & Alec Morton (2025) Mapping gaps and exploring impairment and disability prevalence in South Asian (SAARC) countries: a scoping review, *Disability and Rehabilitation: Assistive Technology*, 20:4, 1013-1026, DOI: 10.1080/17483107.2024.2426618

³ World Health Organization. World Report on Disability. Geneva; 2011. Available from <http://www.who.int/about/>.<accessed on November 10, 2025

In this Regard, India and Sri Lanka, as two South Asian jurisdictions grounded in shared cultural and post-colonial constitutional traditions, have progressively developed legal mechanisms to address the common social and structural barriers encountered by the differently abled community. Both nations have attempted to align their domestic frameworks with the guiding principles of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and broader international human rights standards. However, their trajectories of implementation reveal notable divergences. Therefore, it becomes imperative to critically assess the extent to which international commitments under the UNCRPD have been effectively incorporated within domestic legal systems. Such an inquiry is particularly vital to the evolution of South Asian jurisprudence, as the challenges confronting differently abled persons in India and Sri Lanka exemplify the broader structural and normative issues shared across the region's legal and social landscapes. The study will scrutinize Sri Lanka's and India's disability-rights jurisprudence in conjunction with pertinent international legal standards.

The primary objective of this research is to critically examine and compare the legal frameworks of India and Sri Lanka concerning the rights of differently abled persons, with specific reference to the obligations arising under the UNCRPD. This research aims to evaluate the extent to which both jurisdictions have incorporated UNCRPD principles into their constitutional, legislative, and judicial frameworks, and to identify gaps, challenges, and areas requiring reform for effective disability rights protection. It further explores how Sri Lanka can draw insights from India's jurisprudential advancements to strengthen its legislative recognition and judicial engagement with the rights of differently abled persons under the UNCRPD framework.

Global Commitments under the UNCRPD: International Perspectives on differently abled rights

The concept of human rights for differently-abled persons began to become more accepted internationally. Even the Universal Declaration of Human Rights⁴, in Article 02, emphasizes equality and freedom for all human beings without discrimination. However, when this principle was incorporated into the United Nations' core human rights treaties, there was a lack of understanding regarding the need for specific legal protections for people with disabilities. While there may be practical challenges, there's no dispute about the theoretical applicability

⁴ The Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December 1948

of these declarations and conventions to disabled individuals. Furthermore, Article 7 of the Universal Declaration of Human Rights (UDHR) states that all are equal before the law and are entitled without any discrimination to equal protection of the law. The Declaration on Rights of Disabled Persons also grants the right of equality and right to respect for human dignity to all disabled persons without any discrimination on the basis of race, sex, language, religion, national or social origin, etc. Persons with disabilities have the fundamental rights same as other citizens.⁵

Additionally, international human rights instruments such as the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), among others, are considered “hard law” within the United Nations’ core human rights framework. Although these treaties do not explicitly articulate the rights of persons with disabilities, their provisions are drafted in universal terms, thereby encompassing all human beings, including differently abled persons, within their respective provinces. Each of these hard laws implicitly protects persons with disabilities, but to varying degrees. To invoke these protections, disabled persons must either fall under a universal provision or possess a separately protected characteristic in addition to his or her disability.⁶

As discussed above, over the past six decades, international human rights law reflected a normative gap in addressing the specific rights of persons with disabilities. Earlier instruments promoted universality and equality but overlooked disability as a distinct legal concern. The formed of the *United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)* in 2006 accepted as the first comprehensive international convention exclusively dedicated to global disability rights arena, effectively filled the long-standing gap in international human rights framework.

The UNCRPD recognizes that individuals with disabilities encompass those with enduring physical, mental, intellectual, or sensory impairments, which, when combined with various obstacles, may impede their full and meaningful participation in society on an equitable basis

⁵ Ravi Prakash, Aman Gupta. An Analytical Study of Disability Laws in India vis-à-vis UNCRPD (Disability Laws in India): A Jurisprudential Overview. *Journal of Constitutional Law and Jurisprudence*. 2018; 1(2):21–30p.

⁶ Michael Ashley Stein, ‘Disability Human Rights’ (2007) 95 *California Law Review* 75, P.79-80

with others. In the context the said global forum set the ideal platform to hold final discussion establish a universal framework to address the disability related issues. This convention marked a significant change from a focus on "charity" to a focus on "rights" for individuals with disabilities, leading to a new era.⁷ Since its adoption, more than 160 countries and regional organizations have ratified the Convention through implementing legislation. Moreover, over the past eight years, the international community has increasingly utilized disability rights as a benchmark for assessing the human rights landscape within individual nations.

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is not only the first human rights treaty of the twenty-first century, it is the first legally binding instrument that explicitly provides an explanation of how human rights can be applied to people with disability.⁸ In the preamble of the UNCRPD, it is acknowledged that disability is a dynamic notion. It highlights that disability arises from the interplay between individuals with impairments and societal attitudes and environmental obstacles, which restrict their complete and meaningful involvement in society on an equal footing with others. Articles 01 and 03 of the UNCRPD collectively define its purpose and general principles, ensuring the equal enjoyment of rights by persons with disabilities. They emphasize dignity, autonomy, non-discrimination, inclusion, accessibility, and equality, forming the foundation of the Convention's rights-based approach. Building on these foundations, Article 04 imposes obligations on States Parties to actively promote and protect these rights, ensuring their realization without discrimination of any kind. Together, these provisions form the normative and systematic framework of the Convention. The Optional Protocol to the UNCRPD creates an additional oversight mechanism enabling individuals and groups in States Parties to submit complaints to the Committee on the Rights of Persons with Disabilities after exhausting domestic remedies. Once a communication is deemed admissible, the Committee seeks a response from the State within six month period and requires the State to prevent any further harm to the complainant. After examining the matter, the Committee may issue recommendations, and in cases of serious or systemic violations, it may initiate an inquiry and request follow-up reports on measures taken under Article 35 of the Convention.

⁷ Rao, Gunduguri Prasad, Vemulokonda Sri Ramya, and Math Suresh Bada. "The rights of persons with Disability Bill, 2014: How "enabling" is it for persons with mental illness?." 58 Indian journal of psychiatry, pp:121-128

⁸ UN General Assembly. "Convention on the rights of persons with disabilities." A/RES/61/106, 2006. Available online: <http://www.un.org/Docs/asp/ws.asp?m=A/RES/61/106> (accessed on 10 November 2025).

Following the adoption of the UNCRPD, a range of global and regional initiatives has emerged to reinforce its implementation and embed disability rights within broader human rights and development frameworks. In Global level, the Global Disability Summits of 2018 and 2022 served as pivotal platforms for translating UNCRPD principles into concrete action, producing extensive state and institutional commitments including the widely endorsed *Charter for Change* aimed at advancing accessibility, inclusive education, and equal participation.⁹

In parallel, key UN agencies such as the WHO, ILO, UNDP, and UNICEF have initiated programmes focused on strengthening inclusive health systems, expanding access to assistive technologies, promoting decent work opportunities, and enhancing social protection, thereby operationalizing the Convention's core obligations.¹⁰

In the south Asian context recognition of differently abled rights has evolved in the wake of the UNCRPD, prompting legal reforms across the region. However, progress remains constrained by deep cultural legacies, weak enforcement, and structural barriers that sustain a welfare-oriented rather than rights-based approach. The differently abled person rights movement in South Asia remains in a formative stage, striving to realize its intended objectives amid persistent social attitudes, entrenched religious beliefs, and cultural barriers that continue to hinder its effective advancement and enforcement. The disability movement in South Asia is still at its nascent stage, still battling against the "morality model" that considers disability resulting from one's "moral lapse and brings shame to the individual and to the family"¹¹. Thus, the legal approach of South Asian states toward disability rights, including the ratification and domestic implementation of international conventions, appears deeply interwoven with prevailing socio-cultural dynamics. However all nations of south Asian states have either signed or ratified the Convention, signaling their recognition of disability rights as an integral component of human rights. It is therefore imperative to critically assess the extent to which South Asian states accord substantive attention to disability rights and to evaluate the adequacy

⁹ *Global Disability Summit 2018: Summary of Commitments* ; https://assets.publishing.service.gov.uk/media/5b646dd1ed915d377f491598/Global-Disability-Summit-Summary-Commitments_2.pdf GOV.UK+1 <accessed on 10 November 2025

Global Disability Summit 2022: Co-Chairs' Summary — https://www.globaldisabilitysummit.org/wp-content/uploads/2024/08/220217_GDS_Chairs-Summary.pdf .Accessed on November 10, 2025

¹⁰ WHO, *Global Disability Action Plan 2014–2021* (WHO 2015); ILO, *Disability Inclusion Strategy and Action Plan* (ILO 2020); UNDP, *Inclusive Development and Persons with Disabilities* (UNDP 2018); UNICEF, *The State of the World's Children: Children with Disabilities* (UNICEF 2013).

¹¹ Das, Shilpa. 2010. "Hope for the Invisible Women in India: Disability, Gender and the Concepts of Karma and Shakti in the Indian Weltanschauung." In *Hope Against Hope: Philosophies, Cultures and Politics of Possibility and Doubt*. Eds. Janet Horrigan & Ed Wiltse. Amsterdam; New York: Rodopi., p.132

of their legal and policy frameworks in ensuring meaningful protection and inclusion for persons with disabilities.

Constitutional Guarantees and the Protection of Disability Rights in India and Sri Lanka

A comparative examination of the constitutional protections afforded to persons with disabilities in India and Sri Lanka reveals how each State embeds equality, dignity, and non-discrimination within its supreme legal framework. In the Indian context, the constitutional framework provides a robust foundation for the protection of disability rights, even in the absence of an explicit disability-specific provision. The Preamble is the part of our Constitution and which is of extreme importance, which consists of the grand and noble vision. The Preamble declares the great right and freedom which the people of India intended to secure to all its citizens. The Fundamental rights are not explicitly used the word 'Disabled Persons', but used weaker section of the society. Specially, the Constitution of India ensures equality, freedom, justice and dignity of all individuals and implicitly mandates an inclusive society for all including persons with disabilities. Disabled persons are no longer discriminated against due to their physical problems but are treated equally under the eyes of the law. Articles 14, 15, 16 and 21 of Indian Constitution depict providing equal liberty, Integrity, and dignity to all the citizens.¹²

In the Sri Lankan context, the recognition of the civil and political rights of persons with disabilities had begun even before the UNCRPD was adopted in 2006, demonstrating the State's initial steps toward integrating disability rights into its domestic legal framework. Specifically, Article 12 of the 1978 Constitution of Sri Lanka guarantees the right to equality as a fundamental right for all Sri Lankans, including those with disabilities. Article 12(3) prohibits discrimination on various grounds, ensuring that individuals with disabilities have access to shops, public restaurants, hotels, places of public entertainment, and places of worship without facing any restrictions based on their disability. Complementing this, Article 12(4) expressly guarantee the State to make special provisions through legislation, subordinate laws, or executive action for the advancement of disabled persons. This clause provides the constitutional foundation for affirmative action and enables the State to adopt disability-inclusive measures without being constrained by equality-based challenges, thereby

¹² P Kumaran, 'Rights of Differently-Abled Persons' *Scholarly Research Journal for Humanity Science & English Language* (June–July 2024) 12(64) p.11, Online ISSN 2348-3083
https://www.srjis.com/issues_data/235 accessed on November 12, 2025

strengthening Sri Lanka's capacity to align its domestic protections with the principles later articulated under the UNCRPD.

Legislative Frameworks and Alignment with the UNCRPD: A Comparative Review of India's RPwD Act, 2016 and Sri Lanka's Protection of the Rights of Persons with Disabilities Act, 1996

For South Asian states such as India and Sri Lanka, both of which have ratified the UNCRPD, aligning domestic legal systems with international disability rights standards has become a key measure of their commitment to disability justice. India ratified the Convention in 2007, while Sri Lanka ratified it in 2016, marking important milestones in their respective transitions toward a differently abled persons rights. Following ratification, both states introduced significant legislative reforms: India enacted the Rights of Persons with Disabilities Act, (RPwD) 2016, and Sri Lanka adopted the Protection of the Rights of Persons with Disabilities Act, No. 28 of 1996, supplemented by later regulations and policy directives.

The Rights of Persons with Disabilities Act, 2016 (RPwD Act) is India's key legislative instrument enacted to give domestic effect to the obligations arising under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). This comprehensive law replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and introduced several key provisions to strengthen the rights of people with disabilities. Ideally, the act is introduced to preserve the dignity of every Person with Disability in society and to purify the victim from any discriminatory attitude.¹³ The Act defines a person with disability as 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.¹⁴ This definition closely aligns with Article 01 of the UNCRPD¹⁵, as it adopts a broad and inclusive understanding of disability that extends beyond physical impairments to encompass mental, intellectual, and sensory disabilities, while

¹³ Richard M. Duffy and Brendan D. Kelly (eds). India's Rights of Persons with Disabilities Act. In India's Mental Healthcare Act, 2017, (Springer, Singapore 2020) P 61-80 https://doi.org/10.1007/978-981-15-5009-6_5

¹⁴ Section 2 (s), The Rights of Persons with Disabilities Act, 2016

¹⁵ Article 01 UNCRPD ; 'persons with disabilities' include "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hamper their complete and effective participation in society on an equal basis with others" > United Nations General Assembly, Convention on the Rights of Persons with Disabilities, A/RES/61/106, Art. 1 (2006).

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>. Accessed on 10th November 2025

also recognizing the role of societal and environmental barriers in limiting equal and effective participation.

In Sri Lanka, individuals with disabilities are legally defined according to Interpretation clause of the Protection of the Rights of Persons with Disabilities Act as "person with a disability," referring to someone whose physical or mental abilities, whether present from birth or acquired later, prevent them from independently meeting their basic needs.¹⁶ This definition forms the primary legal basis for understanding disability in the country, it remains largely rooted in a medicalized perspective. As a result, it fails to adequately acknowledge the broader sociocultural, structural, and infrastructural barriers that play a significant role in producing disabling experiences. The definition narrowly conceptualizes disability as an individual or medical issue while overlooking the societal, structural, and environmental factors that may contribute to disabling conditions.¹⁷ Although Sri Lanka has ratified the UNCRPD, its statutory definition has not been updated to reflect the Convention's shift toward a rights-based, participatory understanding of disability.

The Rights of Persons with Disabilities (RPwD) Act of 2016 offers numerous benefits and has a far-reaching impact on the lives of people with disabilities in India. It significantly enhances social inclusion by legally addressing various forms of discrimination, ensuring that persons with disabilities (PWDs) are integrated into key areas such as education, employment, and public life.¹⁸ Section 3(1) reinforces the Act's commitment to equality and non-discrimination by requiring the appropriate Government to ensure that persons with disabilities enjoy the right to equality, dignity, and have their integrity respected on par with others. This provision anchors the statute in a strong rights-based framework, underscoring that disability cannot justify unequal treatment and placing a clear obligation on the State to safeguard the inherent dignity of every person with a disability. Unlike the Indian Act, which adopts a comprehensive rights-based framework aligned with the UNCRPD, the Sri Lankan statute retains a largely welfare-oriented structure and lacks an express statutory commitment to equality and non-discrimination for persons with disabilities. Although the Sri Lankan Protection of the Rights

¹⁶ Section 37, Rights of Persons with Disabilities Act, No. 28 of 1996 of Sri Lanka

¹⁷ Chandani Liyanage, A Case Study of Sri Lanka ; Enhancing Disability-Inclusive Employment Policies in Asia: Challenges, Good Practices, and Policy Recommendations (Asian productivity organization, may 2025) p.103

¹⁸ Syeda Tahseen Kulsum, **K Madan Gopal** and **Arpita Aggarwal**, 'Assessment of the Rights of Persons with Disabilities Act, 2016 in India: A Comprehensive Study on Implementation and Impact' (IJFMR, Vol 6 Issue 6, Nov-Dec 2024) p.2

of Persons with Disabilities Act establishes the National Council¹⁹ for Persons with Disabilities and, under Section 12, mandates it to promote, advance, and protect the rights of persons with disabilities, the Act does not expressly articulate core UNCRPD principles such as equality, dignity, or respect for personal integrity in the manner found in India's disability legislation.

The Rights of Persons with Disabilities Act of India gives effect to the UNCRPD by expressly recognising several individual rights essential for securing a dignified life for persons with disabilities. These include the right to education²⁰, non-discrimination in employment,²¹ social security,²² health care,²³ the right to participation in sporting activities,²⁴ and the right to accessibility²⁵. Together, these guarantees establish a robust rights-based framework that affirms autonomy, inclusion, and equality, ensuring that persons with disabilities are entitled to exercise their individual rights without discrimination and to enjoy the substantive conditions necessary for living with dignity. In contrast, Sri Lankan act Section 23 outlines the individuals with disabilities should not face discrimination based on their disability when applying for jobs, seeking admission to educational institutions, or holding any office. Likewise, they should not encounter any obstacles or limitations due to their disability when accessing or using public buildings or spaces that are accessible to the public, regardless of whether a fee is required for entry. The current legislative framework in Sri Lanka recognizes the rights of persons with disabilities mainly in terms of accessibility, education, and employment opportunities. Despite efforts to align with the UNCRPD, there has been no significant consultation with the disability community, particularly regarding political participation.²⁶ In comparison to India, Sri Lanka has recognised a more limited spectrum of rights for persons with disabilities, reflecting a narrower legislative approach that falls short of the UNCRPD's broader vision of autonomy, participation, and non-discrimination.

Section 12 of the *Rights of Persons with Disabilities Act India, 2016* advances the UNCRPD obligation to ensure access to justice,²⁷ requiring that persons with disabilities be able to approach courts and judicial bodies without discrimination. Likewise, Section 13 reflects the

¹⁹ Section 02 , The Rights of Persons with Disabilities Act 49 of 2016 of India

²⁰ Sections 16 , 17 and 18 , The Rights of Persons with Disabilities Act 49 of 2016 of India

²¹ Section 20 , The Rights of Persons with Disabilities Act 49 of 2016 of India

²² Section 24 , The Rights of Persons with Disabilities Act 49 of 2016 of India

²³ Section 25 , The Rights of Persons with Disabilities Act 49 of 2016 of India

²⁴ Section 30 , The Rights of Persons with Disabilities Act 49 of 2016 of India

²⁵ Section 40 , The Rights of Persons with Disabilities Act 49 of 2016 of India

²⁶ *Situational Analysis of the Rights of Persons With Disabilities in Sri Lanka: Country Report* (Global Disability Fund / UNPRPD, September 2024) p.21

²⁷ Article 13, UN Convention on the Rights of Persons with Disabilities (2006)

Convention's guarantee of equal legal recognition and capacity²⁸ affirming that persons with disabilities must be able to exercise legal rights on an equal basis with others. Together, these provisions bring India's domestic framework closer to the rights-based standards established under the UNCRPD. The Sri Lankan Act contains no dedicated provisions ensuring accessible courts, procedural accommodations, or legal capacity protections comparable to the guarantees required under the UNCRPD. Instead, it relies largely on the general institutional functions assigned to the National Council and on broader constitutional principles, resulting in a framework that does not fully meet international standards.

In summary, Sri Lanka's disability legislation, developed before the adoption of the UNCRPD, still reflects a predominantly welfare-based orientation and therefore leaves several areas insufficiently addressed under modern international norms. By comparison, India's more contemporary, rights-focused framework demonstrates a clearer incorporation of UNCRPD principles, providing useful direction for Sri Lanka as it works toward updating its laws and bridging these existing gaps.

Judicial Approaches to the Rights of Differently Abled Persons

Indian approach

An assessment of judicial approaches to the rights of differently abled persons in India and Sri Lanka is essential to understanding how constitutional guarantees and legislative frameworks are implemented within their respective legal systems. Moreover, such an analysis demonstrates the extent to which judicial reasoning in both states aligns with the normative expectations of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), particularly in promoting dignity, equality, and substantive inclusion for differently abled individuals.

The Indian judiciary has played a pivotal role in advancing and safeguarding the human rights of persons with disabilities. The Indian judiciary has identified and addressed a wide range of areas impacting the rights of persons with disabilities. In the case of *National Federation of Blind v. Union Public Service Commission*²⁹ the Supreme Court held that identification of post suitable for disabled and providing reservation is the matter for the Government to decide.

²⁸ Article 12, UN Convention on the Rights of Persons with Disabilities (2006)

²⁹ (1993) 2 SCC 411

Further, court observed that employment opportunities for persons with disabilities can be effectively provided only when suitable posts are appropriately identified for them. Under the Rights of Persons with Disabilities Act, 2016, the Indian government has mandated a 4% reservation in employment for persons with disabilities.³⁰ In ***Union Public Service Commission v National Federation of Blind***³¹ the Court held a landmark ruling affirming the inclusion of visually impaired candidates in Civil Services Examinations. The Supreme Court directed the Government of India and the UPSC to facilitate participation by allowing the use of Braille or scribes, provided candidates meet all other eligibility criteria. In ***Bhavya Nain v High Court of Delhi***³² the Delhi High Court initially denied reservation to a candidate with bipolar disorder, reasoning that the condition was not permanent or long-term enough to meet the 40% disability threshold under the RPwD Act, 2016. The Supreme Court intervened, recognising mental illness as a valid form of disability and instructed the authorities to keep one position open for Nain, affirming the inclusion of persons with mental disabilities in employment opportunities. Another landmark judgment In ***Indra Sawhney v Union of India***,³³ the Supreme Court acknowledged the position of persons with disabilities within the framework of public employment reservations. The Court observed that individuals with disabilities may be accommodated within the broader understanding of “backward classes,” and that extending affirmative action to them is constitutionally legitimate. This recognition affirmed that disability-based disadvantage warrants state intervention to ensure substantive equality. These judgments aligns with Article 05 and 27 of the UNCRPD, which recognises the right of persons with disabilities to work on an equal basis with others and requires states to ensure appropriate accommodations to enable equal employment opportunities.

In the education sector, the Indian judiciary has consistently affirmed the rights of differently abled persons, reflecting the principles of the UNCRPD³⁴ and underscoring the imperative of human dignity and inclusive participation. In the case of ***Disabled Rights Group v Union of India***³⁵ the petitioners, represented by counsel from the Disabled Law Initiative and the Socio-Legal Information Centre, challenged the inadequate academic support available to students with disabilities. Acting on the Supreme Court’s directions, the University Grants Commission subsequently appointed a committee to undertake a detailed evaluation of university campuses,

³⁰ Section 34, The Rights of Persons with Disabilities Act 49 of 2016 of India

³¹ (2013) 10 SCC 772

³² AIR 2020 DEL 671

³³ 1992 Supp (3) SCC 217

³⁴ Article 24 , UN Convention on the Rights of Persons with Disabilities (2006)

³⁵ AIR 2018 SC 543

focusing on the accessibility of facilities and the inclusiveness of teaching practices for persons with disabilities.

In India, constitutional protection for persons with disabilities has evolved through progressive judicial interpretation of Articles 21 on right to life. The Supreme Court has expanded Article 21 of the constitution to encompass dignity, autonomy, and meaningful societal participation, as seen in *Vikash Kumar v. UPSC*³⁶, where the Court affirmed that reasonable accommodation is integral to the right to life and aligned its reasoning with the UNCRPD's rights-based framework. Most recent Indian disability-rights judgments emphasise that reasonable accommodation is not merely a policy choice but a constitutional mandate, flowing directly from Article 14's guarantee of substantive equality. In the case *Jeeja Ghosh & Anr. v. Union of India & Ors*³⁷ court emphasized that Equality not only implies preventing discrimination, but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation..." Another Landmark Case *Omkar Ramchandra Gond v. Union of India*³⁸ the Supreme Court struck down the NMC rule requiring MBBS candidates to have "both hands intact," holding that such a blanket exclusion is discriminatory. The Court emphasised functional ability and reasonable accommodation under the RPwD Act and the UNCRPD, directing the NMC to revise its guidelines to ensure fair access for persons with disabilities. Further the Court reinforced constitutional principles of equality under³⁹ and educational rights⁴⁰, aligning with the transformative vision of inclusive education under the RPwD Act. Another recent case *Om Rathod v. The Director General of Health Services & Ors*⁴¹ The Court emphasised that rigid physical requirements violate the spirit of the UNCRPD, and defeat the rights secured under the RPwD Act, 2016. It noted that such ableist standards have no place in modern statutory regulations and directly erode the principle of reasonable accommodation, which is integral to ensuring substantive equality for persons with disabilities. Accordingly, the foregoing judicial decisions representing contemporary Indian judicial perspectives illustrate a clear and consistent trend toward interpreting constitutional and statutory provisions in harmony with the principles of the UNCRPD. Through this jurisprudential shift, Indian courts have strengthened the normative

³⁶ (2021) 5 SCC 370

³⁷ (2016) 7 SCC 761

³⁸ (2024) SC 269

³⁹ Article 14, Constitution of India 1950

⁴⁰ Article 41, Constitution of India 1950

⁴¹ [2024] 10 S.C.R.

force of disability rights and advanced a robust rights-based framework that moves decisively beyond welfare-oriented or medicalized approaches.

Sri Lankan approach

A Sri Lankan perspective reveals that, although judicial decisions directly addressing disability rights remain limited in number, the existing jurisprudence demonstrates a growing judicial willingness to engage with and incorporate international human rights standards into domestic reasoning. In 2006, the government enacted the Disabled Persons Accessibility Regulations, making it mandatory to ensure accessibility for persons with disabilities in all public places and buildings. Section 02 of the regulation stipulated a three-year deadline for existing public buildings and places to become accessible. However, even after nine years, most public buildings still lack proper accessibility facilities for people with disabilities.

In the case of *Dr. Ajith Perera vs Attorney General*⁴² the Supreme Court stressed the importance of implementing this regulation progressively. The petition challenged the lack of compliance with regulations regarding access facilities for persons with disabilities by several respondents, including the National Council for Persons with Disabilities, before the Supreme Court of Sri Lanka. In the petition, it was argued that all public buildings and places should adhere to regulations ensuring accessibility for persons with disabilities. The Supreme Court of Sri Lanka, in response to the petitioner's application, issued several directives to the National Council for Persons with Disabilities and the National Secretariat for Persons with Disabilities, in accordance with the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996 and the Disabled Persons (Accessibility) Regulations No. 1 of 2006. Additionally, the state was ordered to cover the petitioner's legal costs, amounting to Rs.50,000/-, on April 18th, 2019. Following the commencement of the mentioned judgment, the disability rights movement in Sri Lanka reinvigorated its campaign for ratification of the UNCRPD, garnering increased energy and international support. However, with the commencement of said judgment, Sri Lankan disability rights movement restarted their U N C R P D ratification campaign with more energy and international cooperation.⁴³

⁴² [2013] 1 Sri LR 245

⁴³ DSR Jayawardena, *Protection of the Rights of the People with Disabilities in Sri Lanka: Need for New Legislation* (Proceedings of the 8th International Research Conference, General Sir John Kotellawala Defence University, November 2015) p.170

Conclusion: Comparative Insights and the Way Forward

A comparative analysis of the disability rights frameworks of India and Sri Lanka reveals both shared commitments and notable divergences in their efforts to ensure the obligations set out in the UNCRPD. India exhibits a distinctly advanced rights-based trajectory in the protection of persons with disabilities, as evidenced by its comprehensive Rights of Persons with Disabilities Act, 2016, the robust constitutional jurisprudence developed under Articles 14 and 21, and an increasingly progressive judicial approach that internalizes core UNCRPD principles. Notably, doctrines such as reasonable accommodation, substantive equality, and human dignity have been meaningfully incorporated into domestic adjudication, signaling a strong alignment between international commitments and constitutional practice. India has adopted a very straight forward approach in dealing with the issue of disability as it was one of the first signatories of UNCRPD. Moreover, the constitutional and legal regime in India does provide a very favorable and suitable climate and opportunity for implementing the UNCRPD.⁴⁴

In Sri Lanka, individuals with disabilities have consistently faced marginalization due to the lack of a comprehensive human rights approach in protecting their rights. As a result, they often feel aggrieved and unjustly treated within the framework of human rights. Recognizing the diverse nature of disabilities and their significant implications for the future of Sri Lankan society it can be stated that it includes issues such as access to education, employment, sexual and reproductive rights, healthcare, and political participation. Furthermore, due to the absence of a human rights-based approach has led to the neglect and marginalization of individuals with disabilities by both public and private sectors. They often face inequality in terms of their freedom of expression, access to information, ability to voice their opinions, and enjoyment of equal rights. Additionally, individuals with disabilities encounter various structural obstacles when navigating the legal system in Sri Lanka. Meeting procedural requirements within the court system poses challenges, as they may lack alternative communication methods and struggle with physical access to court premises while seeking justice. Some individuals with disabilities report difficulties accessing the court system in Sri Lanka due to both infrastructural limitations and societal barriers.

⁴⁴ Ravi Prakash, Aman Gupta. An Analytical Study of Disability Laws in India vis-à-vis UNCRPD (Disability Laws in India): A Jurisprudential Overview. *Journal of Constitutional Law and Jurisprudence*. 2018; 1(2): p.28

However, as South Asian regional states, it is essential to examine whether both of these countries have effectively implemented the common rights of persons with disabilities in accordance with the standards expected under the UNCRPD. Although India has made a genuine effort to align itself with UNCRPD standards, there are still certain issues that require emphasis and remain to be fully addressed. For an example, Assessment of autism is not yet included in the RPWD Act, 2016. The current disability guidelines specify certain professionals to certify specific disabilities, which may create obstacles in obtaining disability certificates. Many medical specializations have been left out, such as psychiatrists not being included in the assessment of learning disability.⁴⁵ Another challenge in India's disability-rights framework lies in the assessment process. The Department of Empowerment of Persons with Disabilities uses the Indian Disability Evaluation and Assessment Scale (IDEAS) to classify mental illness as mild, moderate, severe, or profound. However, this method has been criticized for inconsistencies and limited sensitivity to the varied nature of psychosocial disabilities. As a result, many individuals struggle to obtain accurate disability certificates, affecting their access to essential rights and benefits.

By ratifying the UNCRPD in 2007, India undertook a clear obligation to shift the treatment of persons with disabilities from a charity-based model to a rights-based framework in which individuals are recognized as rights-holders capable of asserting their entitlements. However, despite this commitment, several shortcomings persist within the Rights of Persons with Disabilities Act, 2016, which require urgent attention and reform. Although RPWD Act, 2016 is a rights-based legislation, the success of the statute will largely depend on the proactive measures taken by the respective state governments on its implementation. A clear and comprehensive procedural medium is to be formulated for the advancement of disability rights.⁴⁶ The implementation of the Act remains uneven due to limited institutional capacity, inadequate budgetary allocations, and weak monitoring mechanisms across States.

According to Sri Lankan perspectives, despite constituting a significant portion (8.7%) of the population, individuals with disabilities continue to face challenges in accessing their basic economic rights, including the right to work, fair wages, safe and healthy working conditions, opportunities for promotion, and the ability to engage in trade union activities. As of the end

⁴⁵ Rahul Jain and Neha Chaudhary, 'Analyzing the Rights and Entitlements of Persons with Disabilities in India' (2025) 1(1) *Chandigarh University Law Review* p. 140

⁴⁶ Avinash Vitthalrao Aneraye and Sunil Kumar Shirpurkar, 'Review of Indian Legislation for Persons with Disabilities' (2023) 9(4) *International Education and Research Journal*, E-ISSN 2454-9916, p.35

of 2021, Sri Lanka had become a party to all major human rights treaties of the United Nations, including the United Nations Convention on the Rights of Persons with Disabilities. However, Sri Lanka has not ratified the Optional Protocol, which allows individuals or groups to communicate with the Committee on the Rights of Persons with Disabilities. The Government of Sri Lanka should promptly take steps to ratify the Optional Protocol, enabling individuals or groups to communicate with the Committee on the Rights of Persons with Disabilities. Accession to this protocol would enhance mechanisms for protecting and promoting the rights of individuals with disabilities in the country.

Sri Lanka's existing disability framework continues to operate largely within a welfare-oriented paradigm, falling short of the rights-based standards articulated by the UNCRPD. This divergence highlights the need for urgent legislative reform to embed principles of equality, autonomy, and human dignity into the domestic legal system. Drawing on India's more advanced jurisprudence and statutory practice particularly its integration of reasonable accommodation, substantive equality, and judicial recognition of UNCRPD obligations Sri Lanka can meaningfully transform its disability rights regime. A comprehensive rights-based legislative enactment is therefore essential to ensure that persons with disabilities in Sri Lanka are treated not as recipients of charity, but as rights-holders entitled to full and equal participation in society.