
DISABILITY RIGHTS AND REASONABLE ACCOMMODATION: BALANCING EQUALITY AND NON- DISCRIMINATION IN EDUCATION

Yashaswini Bahuguna, B.A. (H) Sociology, Miranda House, University of Delhi, India

ABSTRACT

This paper examines the concept of disability rights and reasonable accommodation, specifically focusing on balancing equality and non-discrimination. The Right to Equality is a fundamental principle enshrined in the Indian Constitution. It ensures that all individuals, including persons with disabilities, are treated fairly and without prejudice. However, achieving equality for persons with disabilities often requires reasonable accommodations for them to participate fully in society. In the context of disability rights, reasonable accommodation means necessary modifications and adjustments in order to ensure that persons with disabilities enjoy or exercise rights equally with others. The paper explores the legal framework and jurisprudence surrounding disability rights and reasonable accommodation in India. It examines the challenges faced in implementing reasonable accommodation, especially in the field of education. The findings contribute to the ongoing discourse on disability rights and provide insights into the practical implementation of reasonable accommodation measures in India, especially the reservation policies. By examining the nuances and complexities of this issue, the research aims to inform policy and legal developments better to ensure the realisation of equality for persons with disabilities.

Keywords: Disability Rights; Equality; Rights Discourses; India; Inclusivity; Accessibility

Introduction:

By virtue of being Humans, all individuals possess the entitlement to experience life, freedom, equality, justice, and respect. However, these experiences have been denied to Persons with disabilities for centuries. The concept of disability rights and reasonable accommodation has garnered significant attention in recent years, with a growing emphasis on achieving a balance between equality and non-discrimination. The Right to Equality, a fundamental principle enshrined in the Indian Constitution, acts as the cornerstone for ensuring fair treatment and eliminating prejudice against all individuals, including those with disabilities. However, attaining equality for persons with disabilities often necessitates the implementation of reasonable accommodation measures, enabling their full participation in society.

There are multiple definitions of disability, which can be categorised into two groups: official definitions created by professionals and academics and definitions developed by people with disabilities and disability-controlled organisations¹. Ranging from the same, the medical model, the social model, and the human rights model are the earliest ones to understand disability. The medical model perceives disability and its solutions through medical knowledge, focusing on bodily "abnormalities," disorders, or deficiencies that result in varying degrees of disability or functional limitations. It recommends curative and rehabilitative medical interventions². In contrast, the social model emerged in the 1970s and 80s as a criticism of the medical model, emphasising the need for societal change rather than individual adjustment and rehabilitation³. However, critics like Shakespeare⁴ and Corker⁵ argue that the social model overlooks the cultural processes shaping disability. From a post-structuralist perspective, exemplified by Foucault⁶ impairment itself is seen as entirely cultural, resulting from social processes. The human rights model, also known as the rights-based model, aims to move the shift away from a 'welfare

¹ Oliver Mike & Colin Barnes, *Disabled People and Social Policy: From Exclusion to Inclusion* (1998).

² COLIN BARNES, G. MERCER & TOM SHAKESPEARE, *EXPLORING DISABILITY: A SOCIOLOGICAL INTRODUCTION* (1999).

³ *Id.*

⁴ Tom Shakespeare, *Researching Disabled Sexuality* 177 (1997).

⁵ Mairian Corker & Sally French, *Disability Discourse* (1999).

⁶ FOUCAULT MICHEL, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (1977); MICHEL FOUCAULT & COLIN GORDON, *POWER/KNOWLEDGE : SELECTED INTERVIEWS AND OTHER WRITINGS 1972-1977* (1980).

approach' to a 'rights-based approach', i.e. recognising their equal capability to assert their rights, make autonomous decisions, and provide consent-based on free and informed choices⁷.

These differing interpretations of disability have had a significant impact on the interpretation and the framing of laws, be it the Right to Equality, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995⁸ or the Right to Education⁹, 2009. However, across the approaches, it is widely agreed upon that reasonable accommodation is essential to ensure the equal rights of individuals with disabilities. This reasonable accommodation can manifest in different ways, including rehabilitative medical interventions (Medical Model), societal transformation through a welfare-oriented approach (Social Model), or the acknowledgement of disability rights as inherent human rights (Rights-based approach). In the field of education, there has been a transition from the medical-based special schooling model, which often resulted in discrimination, to an integrative educational model under the Right to Education Act of 2009 and the Sarva Shiksha Abhiyan, based on the social model. In 2016, there was an amendment in the Indian Disability Law towards a rights-based approach, which was influenced by the human rights model outlined in the 2006 Convention on the Rights of Persons with Disabilities¹⁰. This amendment has now taken the shape of the Rights of Persons with Disabilities Act, 2016¹¹.

A substantial body of literature has acknowledged the numerous hurdles encountered in the implementation of laws and policy formulation concerning disability rights. However, what has often been overlooked is the inherent lack of accessibility to these welfare policies. This can be observed through the multitude of judicial cases that have focused on non-compliance with reservation policies. This paper undertakes a comprehensive examination of the legal framework and jurisprudence pertaining to disability rights and reasonable accommodation in India. Its

⁷ Tushti Chopra, *Expanding the Horizons of Disability Law in India: A Study from a Human Rights Perspective*, 41 JOURNAL OF LAW, MEDICINE & ETHICS 807 (2013).

⁸ Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, No. 1, Acts of Parliament, 1995

⁹ Right to Education, 2009, No. 35, Acts of Parliament, 2009

¹⁰ *Id.*

¹¹ Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016

specific emphasis lies on the obstacles faced in the effective implementation of reasonable accommodation, particularly within the sphere of education, through an analysis of insights derived from judicial cases and the Indian constitution. By scrutinising the intricacies and complexities of these matters, this study endeavours to make a contribution to the ongoing discourse on disability rights. It provides valuable insights into the practical implementation of reasonable accommodation measures in India, with the ultimate goal of fostering an inclusive society that values and empowers individuals, irrespective of their abilities or disabilities.

Understanding Equality: Non-Discrimination and Reasonable Accommodation

The primary objective of disability laws worldwide is to achieve equality between disabled and non-disabled persons. This equality can be defined in two ways: Formal Equality and Substantive Equality. The formal approach focuses on "equal treatment," where individuals or groups are assessed to determine if they are similarly situated. The principle of *Intelligible Differentia* is used to justify differential treatment, i.e., "difference" justifies "differential treatment" irrespective of the outcome. For example, segregated educational facilities for disabled children would not be subject to an equality challenge under the formal approach, as there is an objective difference between disabled and non-disabled children. The principle of non-discrimination is completely disregarded since equality is between 'equals.' Another challenge arises from the fact that the measurement of "difference" is based on 'evidence' which is predominantly based on the prevailing medical terminology of the era.

In contrast to the formal approach, the substantive approach emphasises the actual impact of the law. The debate shifts from the question of sameness/difference to the issue of "disadvantage" owing to the "difference." For persons with disability, this approach acknowledges both social barriers to participation and the limitations imposed by impairments. Pursuing substantive equality does not render the question of sameness or difference irrelevant, but the approach not only recognises the difference but also actively accommodates it. Thus, this approach balances equality and non-discrimination through the provision of reasonable accommodation. However, considering that a State has limited resources, many times a judge's focus shifts from the mere

existence of impairment to assessing the level of vulnerability and the actual need for support resulting from the impairment when addressing reasonable accommodation. This consideration involves the task of securing equality not only between disabled and non-disabled individuals but also among different categories of disabled individuals themselves¹².

In India, the idea of equality is largely understood from its interpretation in the Preamble and the justiciable Right to Equality, which is a Fundamental Right in Part III of the Indian Constitution. The Right to Equality is derived from various articles, particularly Articles 14 to 18, with Articles 15 and 16 being particularly relevant. Article 15 prohibits discrimination by the state against any citizen based on religion, race, caste, sex or place of birth. However, while the right to equality applies to all citizens, it does not explicitly address non-discrimination against individuals with disabilities. While amendments were made to incorporate the concept of reasonable accommodation, these amendments primarily focused on economically, educationally, and socially disadvantaged categories, lacking an explicit provision for persons with disabilities in the constitution. A similar trend can be observed in other articles, including Article 16, which guarantees equality of opportunity in public employment which states that no citizen shall be discriminated against in any employment or office under the state based on religion, race, caste, sex, descent, place of birth or residence. However, reasonable accommodation within this article is specified for the "backward class of citizens" and "economically weaker sections"¹³.

The absence of explicit provisions has resulted in implicit bias and discrimination against individuals with disabilities in various sectors, including education and employment. It is interesting, however, to note that prior to the enactment of the Rights of Persons with Disability Act, most cases related to the rights of persons with disabilities were contested under the Right to Equality (Article 14) and Right to Life¹⁴ (Article 21). The only explicit provision within the constitution regarding persons with disabilities can be found in Article 41¹⁵. When referring to Children with Disability, the Article states that "The State shall within the limits of its economic capacity and development make effective provision for securing the right to work, old age,

¹² Addlakha Renu & Mandal Saptarshi, *Disability Law in India Paradigm Shift or Evolving Discourse*, 44 ECON POLIT WKLY (2009).

¹³ INDIA CONST. art 16

¹⁴ INDIA CONST. art 21

¹⁵ INDIA CONST. art 41

sickness, and disablement.” However, the clause's wording reduces the urgency for prompt action, as can be observed in the years of the national planning process¹⁶

India and Disability Rights: The Legal Framework

India's commitment to disability rights hails largely from its international commitments. Key milestones include the 1969 UN General Assembly Declaration on Social Progress and Development, the 1975 Rights of Disabled Persons, the declaration of 1981 as the International Year of Persons with Disabilities, and the UN Decade of Disabled Persons from 1983 to 1993. The establishment of the International Day of Disabled Persons on December 3 and the adoption of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in 1993 further reinforced the importance of disability rights¹⁷. Several conventions and treaties have specifically addressed the rights of disabled children, including the 1989 UN Convention on the Rights of the Child, the UN Standard Rules of 1993, the UNESCO Salamanca Statement of 1994, and the 2006 UN Convention on the Rights of Persons with Disabilities¹⁸.

The United Nations Convention on the Rights of Persons with Disabilities represents a significant milestone in promoting inclusivity and recognizing the rights of disabled individuals. The Convention calls for the protection, respect, and inclusion of persons with disabilities and urges states to integrate disability rights into all policies and programs. Article 24 of the Convention emphasises the right to education for disabled children, highlighting the importance of social integration, individual development, and community participation. The UNCRPD signifies a paradigm shift towards a social-human rights model, focusing on inclusion and the removal of

¹⁶ RANJITA DAWN, *Education of Children with Disabilities in India: A Critique*, 49 ECON POLIT WKLY 23 (2014), <http://www.jstor.org/stable/24479631>.

¹⁷ B.S. Patil, *Development of International Standards on Rights of Persons*, in RIGHTS OF THE DISABLED: PERSPECTIVE, LEGAL PROTECTION AND ISSUES 31 (A. Singh ed., 2008).

¹⁸ M. Vaughan, *International Policy and Practice*, in EDUCATION & CHILDREN WITH SPECIAL NEEDS: FROM SEGREGATION TO INCLUSION 153 (Seamus Hegarty & Mithu Alur eds., 2002); VANESSA TORRES HERNANDEZ, *Making Good on the Promise of International Law: The Convention on the Rights of Persons with Disabilities and Inclusive Education in China and India*, 17 WASHINGTON INTERNATIONAL LAW JOURNAL (2008), <https://digitalcommons.law.uw.edu/wilj> Available at: <https://digitalcommons.law.uw.edu/wilj/vol17/iss2/8>.

environmental and attitudinal barriers that hinder the full participation and integration of disabled individuals¹⁹.

The acknowledgment and attention towards the rights of disabled individuals in India gained significant visibility in the public sphere during the 1990s, primarily due to the Disability Rights Movement and the involvement of the United Nations. A notable milestone was India's ratification of the Convention on the Rights of Persons with Disabilities (CRPD), which was seen as a significant achievement. This period witnessed the passage and implementation of several legislations by the parliament, including the Rehabilitation Council of India Act in 1992²⁰, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act in 1995, and the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act in 1999²¹. Among these, the Rights of Persons with Disabilities Act, 2016 is a crucial legal framework that encompasses various provisions for ensuring equality and non-discrimination.

Education: Equality and Non-Discrimination

The enactment of the Rights of Persons with Disabilities Act in 1996 can be attributed to the recommendations made by the Kothari Commission (1964-1966). The Kothari Commission was one of the earliest education commissions to address the issue of educating children with special needs. Its recommendations included the integration of the children into regular schools. It emphasised that their education should not be based solely on humanitarianism and pity but should empower them to become productive citizens of the country. The commission recommended that the Ministry of Education allocate the necessary funds to support the education of children with special needs²². However, despite these recommendations, the responsibility for meeting the needs of children with special needs was delegated mainly to the voluntary sector, with government funds allocated for their welfare without maintaining a direct link to the children. Consequently, most

¹⁹ JAYNA KOTHARI, THE FUTURE OF DISABILITY LAW IN INDIA: A CRITICAL ANALYSIS OF THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT 1995 (2012).

²⁰ Rehabilitation Council of India Act., 1992, No. 34, Acts of Parliament, 1992

²¹ Multiple Disabilities Act, 1999, No. 44, Acts of Parliament, 1999

²² M. Alur, *Special Needs Policy in India*, in EDUCATION AND CHILDREN WITH SPECIAL NEEDS: FROM SEGREGATION TO INCLUSION 155 (Seamus Hegarty & Mithu Alur eds., 2002).

children with intellectual disabilities and multiple disabilities are still educated in schools run by non-governmental organisations²³.

The development of the Western education system initially prioritised mass education, largely perceiving disability as an impairment that required specialised treatment in segregated settings. However, the effectiveness of special education in equipping disabled children with the necessary knowledge, skills, and empowerment has been widely criticised²⁴. Consequently, there has been a notable global shift from special education towards inclusive education²⁵. The concept of inclusive education brought about a radical shift as it challenged the notions of categorising disabilities, rectifying them, and separating education from the certification of teachers. Inclusive Education aims to structure the educational environment to include students with special needs within the classroom itself, responding to the needs of all students²⁶. Unlike the "special needs" concept, it recognises the needs as part of the diversity among learners who require equal treatment²⁷. In most cases, inclusion is seen as the antithesis of segregation, similar to how integration is perceived. However, it is important to note that inclusion and integration are not synonymous. Inclusion is best understood as opposing exclusion, with the school being responsible for making necessary adjustments to accommodate the child, as opposed to the child adapting to fit into the school²⁸.

The Rights of Persons with Disabilities Act, 1996, as amended in 2016, grants children with benchmark disabilities the right to choose between regular schools, special schools, or home-based schooling. The Act mandates inclusive education by making necessary modifications in the curriculum, providing training for staff and teachers, and establishing resource centres. Furthermore, the act guarantees free education for children with benchmark disabilities from the ages of six to eighteen, as well as reservations in higher educational institutions. However, these provisions specifically apply to benchmark disabilities, which encompass blindness and low

²³ Ram Lakhan, *Inclusion of Children with Intellectual and Multiple Disabilities: A Community-Based Rehabilitation Approach, India*, 14 JOURNAL OF SPECIAL EDUCATION AND REHABILITATION (2013).

²⁴ Michael Oliver, *Understanding Disability: From Theory to Practice*, 23 THE JOURNAL OF SOCIOLOGY & SOCIAL WELFARE (1996).

²⁵ Filiz Polat, *Inclusion in Education: A Step towards Social Justice*, 31 INT J EDUC DEV 50 (2011).

²⁶ Martha Minow, *Universal Design in Education: Remarking "All the Difference"*, in RIGHTING EDUCATIONAL WRONGS: DISABILITY STUDIES IN LAW AND EDUCATION 38 (Arlene Kanter & Beth Ferri eds., 2013).

²⁷ MADAN MOHAN JHA, FROM SPECIAL TO INCLUSIVE EDUCATION IN INDIA CASE STUDIES OF THREE SCHOOLS IN DELHI (1st edition ed. 2010).

²⁸ GARY THOMAS, DAVID WALKER & JULIE WEBB, THE MAKING OF THE INCLUSIVE SCHOOL (2006).

vision; deaf and hard of hearing; locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims, and muscular dystrophy; and autism, intellectual disability, specific learning disability, mental illness, or any combination thereof. However, this definition has given rise to "certificate anxieties," which are primarily caused by the challenges associated with certifying the disability percentage for individuals with genetic blood disorders.²⁹

In 1974, the Ministry of Welfare launched the Integrated Education for Disabled Children (IEDC) scheme to provide educational opportunities for children with disabilities in regular schools, ensuring their retention within the educational system while providing full financial assistance for their education. In 1987, the Project for Integrated Education Development (PIED) was introduced with the assistance of UNICEF to strengthen the IEDC scheme. External evaluations of the project demonstrated higher enrollment and retention rates for students with disabilities, increased awareness of education for disabled children in regular schools, and improved teaching abilities among teachers.³⁰ However, in 1982, the implementation of the IEDC was transferred to the Department of Education, and in 1986, the education of children with disabilities was incorporated under the Equal Education Opportunity Provision of the National Policy on Education (NPE).

The National Education Policy (NPE) stressed the importance of inclusive education for children with disabilities, stating that those who are capable of being educated in regular schools should not be placed in special schools. Furthermore, as Dasgupta³¹ points out, integration was considered an integral component of the scheme. The Right to Education Act of 2009 is considered one of the most transformative measures in India's education system as it mandates free and compulsory education for children between the ages of 6 and 14. However, the act has faced criticism for various reasons. Similar to the right to equality, there was initially a 'deliberate exclusion' of children with disabilities from the category of "children belonging to disadvantaged groups," which was justified by the fact that PWD takes care of children with disabilities³². Nevertheless, unlike the Right to Equality, an amendment was approved by the union cabinet on December 24,

²⁹ Sanghamitra Das, *"Our Blood Itself Is Disabled!": Haemoglobinopathy, Certificate Anxiety, and Contested Constitutionalism in Disability Legislation in India*, 9 MED ANTHROPOL THEORY 1 (2022).

³⁰ P. R. Dasgupta, *Education for the Disabled*, in EDUCATION AND CHILDREN WITH SPECIAL NEEDS: FROM SEGREGATION TO INCLUSION 41 (Seamus Hegarty & Mithu Alur eds., 2002).

³¹ *Id.*

³² Tanmoy Bhattacharya, *Re-Examining Issue of Inclusion in Education*, 45 ECON POLIT WKLY (2010).

2009, to include children with disabilities within the scope of "children belonging to disadvantaged groups." According to recent data from UNESCO³³ (2019), the percentage of children aged 5-19 years with disabilities attending an educational institution stands at 61%. This marks a significant improvement compared to the alarming figure of less than 2% reported in 2001-2002³⁴.

The most recent development in the educational landscape is the National Education Policy (2020), which aims to achieve "universal access to quality education" in alignment with Goal 4 (SDG4) of the 2030 Agenda for Sustainable Development. The policy emphasises the importance of inclusive and equitable education, as well as lifelong learning opportunities for all individuals by the year 2030. In accordance with this policy, the National Education Policy (2020) introduces a newly established Assessment Centre named PARAKH. This centre is tasked with developing guidelines and recommending appropriate assessment tools for individuals with learning disabilities. Additionally, the policy emphasises the recruitment of special educators with comprehensive training across different disabilities and the establishment of resource centres, as necessary, especially for children with severe or multiple disabilities.

Reasonable Accommodation: Reservations and Challenges

The road to inclusion still remains long and hard despite several progressive policy developments. Palan³⁵ pointed out the existence of systemic and institutional bias in the education system which prevent visually impaired students from opting for sciences even if they want to opt for it. The pandemic made the situation worse. Brennan³⁶ found that respondents from various regions globally highlighted the lack of access to education and vital services for children with disabilities during the pandemic. In fact, a significant portion of these children were not even informed about the external circumstances, including the implementation of lockdown measures.

³³ UNESCO Office in New Delhi (2019) *N FOR NOSE State of the Education Report for India 2019 Children with Disabilities*. New Delhi, Delhi: UNESCO New Delhi Cluster Office for Bangladesh, Bhutan, India, Nepal, the Maldives, and Sri Lanka.

³⁴ S. Mukhopadhyay & M. N. G. Mani, *Education of Children with Special Needs: A Profile of Basic Education*, in INDIA EDUCATION REPORT 96 (R. Govinda ed., 2002).

³⁵ Ruchi Palan, "I Seriously Wanted to Opt for Science, but They Said No": *Visual Impairment and Higher Education in India*, 36 DISABIL SOC 202 (2021).

³⁶ CIARA SIOBHAN BRENNAN EDITORS ET AL., *Disability Rights during the Pandemic A Global Report on Findings of the COVID-19 Disability Rights Monitor Credits*, www.staffordtilley.co.uk.

Within these dilemmas judiciary has played a crucial role in interpreting the constitution to address the policy gaps related to disability rights. In the case of *D.N. Chanchala v. State of Mysore*³⁷, the Supreme Court endorsed a right-based approach for persons with disabilities, extending the principle of preferential treatment under Article 15(4) to ensure equal opportunities in education. The Calcutta High Court also ruled that the absence of reservations for physically handicapped individuals in medical colleges violated the Persons with Disabilities Act and the Constitution. One of the most significant judgements was *Rajive Ratouri vs Union of India*³⁸ wherein the Court grounded the rights of persons with disabilities, notably the right to accessibility in the fundamental rights chapter of the Indian constitution, investing in a rights-based approach. However, even then it should be noted that no urgent action has been consistently demanded.

Moreover, there has been a concern regarding ensuring equality not only between disabled and non-disabled people but also among different categories of disability. According to Addlakha and Mandal³⁹, the judiciary's interpretation of "difference" is influenced by cultural stereotypes and medical knowledge surrounding disabilities. This, in turn, impacts the pursuit of equality within legal frameworks due to the limitation of resources. As a result, judges not only consider the presence of impairment but also assess the level of vulnerability and the actual need for support arising from the impairment. For example, in the *State Council of Educational Research v Ravi Dwivedi*,⁴⁰ the Delhi High Court clarified that Section 33 of the PWD Act is not exhaustive of all subcategories within the disabled community and should be interpreted as an illustrative provision. This indicates that certain types of disabilities have garnered greater recognition and consideration in legal frameworks compared to others. Bhattacharya⁴¹ emphasises that disability acts focus on the "causes" of disability, while judicial interpretations have shifted the focus to the "effects" of disability.

One of the recurrent legal hurdles for persons with disabilities in the field of education has been the non-implementation of reservation policies. One notable case that sheds light on this issue is

³⁷ *D.N. Chanchala vs State of Mysore*, A.I.R. 1971 S.C. 1762 (India)

³⁸ *Rajive Ratouri vs. Union of India*, (2018) 2 S.C.C. 413 (India)

³⁹ Addlakha Renu and Mandal Saptarshi, *supra* note 9.

⁴⁰ *State Council of Educational Research v Ravi Dwivedi* AIR 2008 Delhi 97

⁴¹ Bhattacharya, *supra* note 21.

Disability Rights Group & Anr. vs. Union of India & Ors⁴². This case specifically addressed the non-implementation of the 5% reservation of seats in educational institutions for persons with disabilities. This provision was previously discussed in the case of All Kerala Parents Association of the Hearing Impaired v. State of Kerala, 2002⁴³. Adopting a social model perspective, the judiciary emphasised that societal barriers and oppressive structures hinder the capabilities of individuals with disabilities, leading the court to support the petitioners.

Numerous cases, such as Justice Sunanda Bhandare Foundation vs. Union of India⁴⁴ and another and State of Kerala & Ors. vs. Leesamma Joseph⁴⁵ and many others have addressed the issue of reservation. Despite the formulation of various policies aimed at the welfare of individuals with disabilities, including provisions for free education, much of the discussion has revolved around determining the most suitable type of education, whether it be special schools, inclusive education, or integrative education. Recommendations have been put forth to enhance teacher training and implement supportive mechanisms. While these efforts are commendable and valid, it is disheartening that a significant barrier to accessibility still exists in the form of admission into educational institutions and into employment. Disability justice is a part of structural competency⁴⁶. The persistence of these barriers, even in the presence of reservation policies, is deeply concerning.

Conclusion

The issue of disability rights and reasonable accommodation in India is a complex and evolving field. The concepts of equality, non-discrimination, and reasonable accommodation are crucial in ensuring the inclusion and empowerment of individuals with disabilities. While the Indian Constitution guarantees the Right to Equality, including the Right to Education, the explicit recognition and protection of the rights of persons with disabilities within the constitution have been limited. The understanding of disability has evolved over time, with different models, such

⁴² Disabled Rights Group & Anr vs. Union of India & Ors, (2018) 2 S.C.C. 397

⁴³ All Kerala Parents Association of the Hearing Impaired v. State of Kerala, (2003) 2 WLN 692

⁴⁴ Justice Sunanda Bhandare Foundation vs. Union of India (2015) 10 S.C. 116

⁴⁵ State of Kerala & Ors. vs. Leesamma Joseph (1998) 10 I.A. 10

⁴⁶ MICHELE FRIEDNER, DISABILITY JUSTICE AS PART OF STRUCTURAL COMPETENCY: INFRA/STRUCTURES OF DEAFNESS, COCHLEAR IMPLANTATION, AND RE/HABILITATION IN INDIA, (2023).

as the medical model, social model, and human rights model, offering distinct perspectives. The human rights model, emphasising dignity, respect, equality, and social justice, has gained prominence in recent years, advocating for a rights-based approach that recognizes the agency and autonomy of individuals with disabilities.

Despite the progress made in formulating policies for the welfare of persons with disabilities, challenges remain in the practical implementation of reasonable accommodation. The debate surrounding the type of education, whether special schools, inclusive education, or integrative education, has been a focal point. While efforts have been made to address teacher training and other mechanisms, the major barrier to accessibility lies in the admission process into educational institutions. This barrier persists despite the implementation of reservation policies, highlighting the need for further attention and action. While some cases have highlighted the importance of preferential treatment and equal opportunities for individuals with disabilities, others have highlighted the non-implementation of reservation provisions. The judiciary has played a crucial role in interpreting and applying disability rights laws, with varied approaches and outcomes.